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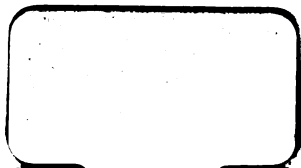
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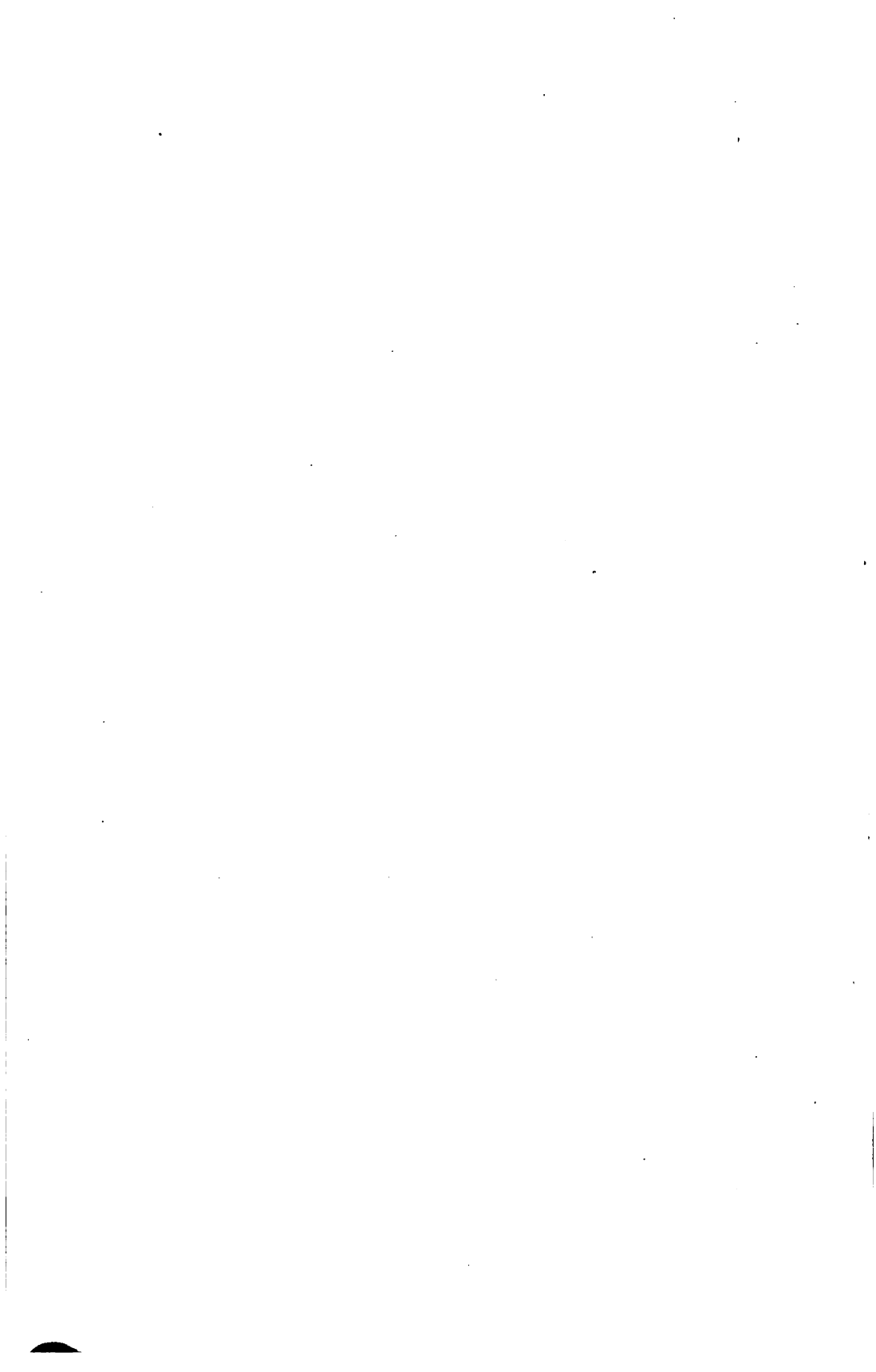
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JOURNAL OF SOCIAL SCIENCE,

CONTAINING THE

PROCEEDINGS OF THE AMERICAN ASSOCIATION.

NUMBER XLV.

SEPTEMBER, 1907.

BUFFALO PAPERS OF 1907.

PAPERS READ IN THE DEPARTMENTS OF JURISPRUDENCE,
SOCIAL ECONOMY, AND EDUCATION.



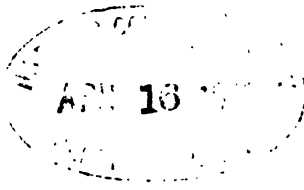
PUBLISHED FOR THE

AMERICAN SOCIAL SCIENCE ASSOCIATION.

DAMRELL & UPHAM AND THE BOSTON BOOK COMPANY, BOSTON, MASS.

[SELLING AGENTS FOR THE ASSOCIATION]

1907.



Sever fund.

EDITED BY

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NEW YORK CITY.

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INTRODUCTION.

The papers included in this number of the *Journal of Social Science* comprise all of the Buffalo addresses of 1907.

The reports of running debates are taken from the notes of the official stenographer; but in most instances such reports have been revised by the contributors to the discussion.

It may be well in this place to remind essayists once more of the *invariable rule* of the Association, that all papers engaged for the General Meeting are so secured with the understanding that they may be published in the *Journal* if deemed advisable. The members of the Council, however, are not pledged in advance to the publication of any particular paper. If writers choose to publish elsewhere, it must be with the stipulation that their papers may also be printed in the *Journal*, at the option of the Council as to date of publication. Heads of departments are not solicitous to secure essays which, in general form and substance, have been read elsewhere before presentation at the Association Meeting.

A list of all addresses and papers will be found in the Table of Contents, and volumes published by the Association may be ordered of the Boston Book Company or of Damrell & Upham, Boston, Mass., the selling agents of the Association.

MEMBERS OF THE ASSOCIATION.

All officers are *ex-officio* members of the Association, but persons serving on the Department Committees may or may not be members of the Association.

In the list herewith submitted the annual and life members are given alphabetically, and the honorary and corresponding members according to nationality. The only distinction between honorary and corresponding members is that the former reside in the United States, and the latter in foreign countries. *It was voted at a meeting of the General Council that the "Journal" of the Association shall not be sent to any annual member who has not paid his dues for the year in which the convention is held which is reported in the "Journal."* It was subsequently voted at a meeting held at Woodmont, Conn., July 6, 1898, that the General Secretary be permitted to use his discretion in carrying into effect this resolution.

BUSINESS OF 1907.

The American Social Science Association held its Forty-fifth Annual Meeting at Buffalo, New York, beginning Wednesday evening, September 11, and closing with the session of Saturday morning, September 14. The proceedings of the convention were carried on in the Auditorium of the Buffalo Historical Society in Delaware Park.

Little formal business was transacted at this meeting of the Association. It was deemed expedient to defer the consideration of the routine affairs of the Association until the meeting of the General Council in the fall.

The members of the Association were called to order at eight o'clock P.M. by President Finley, who then delivered an introductory address and appointed a nominating committee. At a subsequent meeting the list of officers as reported was adopted, and their names will be found on a succeeding page of the *Journal*.

CONSTITUTION, BY-LAWS,
LIST OF OFFICERS, MEMBERS, ETC.

OF THE

American Social Science Association

SEPTEMBER, 1907.

CONSTITUTION.

I. This society shall be called the AMERICAN SOCIAL SCIENCE ASSOCIATION.

II. Its objects shall be classified in five departments: the first, of Education and Art; the second, of Health; the third, of Trade and Finance; the fourth, of Social Economy; the fifth, of Jurisprudence.

III. It shall be administered by a President, as many Vice-Presidents as may be chosen, a Treasurer, a Secretary, and a Council, charged with general supervision; five Department Committees, established by the Council, charged with the supervision of their respective departments; and such Local Committees as may be established by the Council at different points, to serve as branch associations. *The Council shall consist of President, Treasurer, Secretary, First and Second Vice-Presidents, the Chairman and Secretary of each Department, and ten Directors, with power to fill vacancies and to make their own By-laws.* The President, Vice-Presidents, Treasurer, Chairman, and Secretaries of Departments, and Directors shall be chosen annually by members of the Association, and shall hold office till their successors are chosen. The President, or in his absence a Director, shall be chairman of the Council. The Chairman of the Local Committees shall be chosen at the pleasure of their respective committees. Whenever a Branch Association shall be organized and recognized as such by the Council, its President shall be *ex officio* one of the Vice-Presidents of the American Association, and, together with the Secretary and Treasurer, shall be entitled to all the privileges of membership in that Association. And, whenever a Local Department shall be organized and recognized as such by the Council, its Chairman shall become *ex officio* a member of the parent Association. The Chairman and Secretary of each Department, with the consent of the President of the Association, may appoint such special Department Committees as they may think best. The General Secretary shall be elected for three years, unless he resigns, or is removed by a two-thirds vote of the members present and voting in a regular meeting of the Council; and out of his compensation he may pay the salary of an Assistant Secretary, who may also be Secretary of one Department.

IV. Elections to membership shall be made by Standing Committee appointed by the Council in such manner as Council may provide. Any person so elected, and on payment of annual membership fee of five dollars, may continue a member by paying annually such further sum as may be fixed at the Annual Meeting of the Association, not exceeding ten dollars. On payment of one hundred dollars any person may become a life member, exempt from assessments. Honorary and corresponding members may be elected and exempted from the payment of assessments.

V. The Council shall have sole power to call and conduct General Meetings, and to publish the Transactions and other documents of the Association. The Department Committee shall have power to call and conduct Department Meetings.

VI. No amendment of this Constitution shall be made, except at an annual meeting, with public notice of the proposed amendment.

BY-LAWS OF THE ASSOCIATION.

[NOTE.—At a meeting of the Council of the Association, held May 9, 1900, at Washington, a committee of three was appointed to revise the Constitution and formulate By-laws to be considered and adopted by the Council at the earliest opportunity. That committee consisted of the Hon. S. E. Baldwin, the Hon. Francis Wayland, and the General Secretary.

At a subsequent meeting of the Council of the Association, held in New Haven, Conn., Oct. 12, 1900, this committee reported the following By-laws, which were unanimously adopted by the Council. Since the Constitution confers upon the Council power to enact its own By-laws, no further action by the Association is necessary.]

ARTICLE I.

ORDER OF BUSINESS.

The following order of business shall be observed at all meetings of the General Council of the Association:—

- | | |
|----------------------------------|---------------------------|
| (a) Reading of minutes. | (d) Report of committees. |
| (b) Report of Treasurer. | (e) Unfinished business. |
| (c) Report of General Secretary. | (f) New business. |

ARTICLE II.

QUORUM.

The quorum of the Council at all regular and special meetings shall consist of five members, of whom three shall be of the *ex-officio* members of the Council.

ARTICLE III.

VACANCIES.

SECTION 1. A committee shall be appointed on the first day of the general session of the Association to nominate officers, and such committee shall report upon the morning of the last day of the general session.

SECT. 2. The President may fill any vacancy occurring during the year in any office.

ARTICLE IV.

AMENDMENTS.

The By-laws of the Association may be altered, amended, or repealed by the Council at any meeting by a two-thirds vote of the members present.

ARTICLE V.

TREASURER.

SECTION 1. It shall be the duty of the Treasurer to forward bills for annual dues on the first day of January of each successive year, and to meet all bills for printing, publishing, salaries, etc., on presentation of vouchers approved by President or First Vice-President, and the General Secretary.

SECT. 2. No funds shall be set apart for permanent investment without vote of Council; and all funds so set apart may be invested by the Treasurer at his discretion.

SECT. 3. The President or First Vice-President may draw on the Treasurer in favor of the General Secretary at any time for such sums, not exceeding one hundred dollars at any one time, as the President or First Vice-President may deem necessary to meet any proper expenses incident to the management of the Association or the proceedings of the Committee on Elections to Membership.

ARTICLE VI.

PRINTING.

SECTION 1. The selection of papers for publication in the *Journal* shall be left with the President and General Secretary, the latter serving also as editor of the *Journal*, and with the Heads of Departments. The Chairman of each Department will indicate to the General Secretary what papers, in his judgment, are available for publication in the report of proceedings.

SECT. 2. It shall be the duty of the General Secretary to print and distribute such information concerning the objects and purposes of the Association as may be useful in securing new members.

SECT. 3. It shall be the duty of the General Secretary to publish and distribute a cloth-bound copy of the annual *Journal* of the Association to each member in accordance with provisions under article referring to *Memberships*. Each essayist will be entitled to twenty-five reprints of his paper at the expense of the Association, on condition that his application is placed on file prior to the printing of his paper.

SECT. 4. If, in the judgment of the Treasurer and General Secretary, the funds of the Association will not justify publication in cloth, the current edition of the *Journal* shall appear in paper. The uniform date of publication shall be within six months of the Annual Meeting of the Association. Distribution of the *Journal* shall be effected as soon thereafter as possible.

ARTICLE VII.

MEMBERSHIPS.

SECTION 1. Elections to membership shall be made in accordance with provisions contained in Article IV. of the Constitution.

SECT. 2. After initial payment of assessment fee, all members in arrearages for the next following fiscal year of the Association shall not be entitled to the

Journal. Failure to remit annual dues for two consecutive years shall result in loss of membership in the Association. The General Secretary, however, may exercise his discretion as to the application of this rule in given cases.

ARTICLE VIII.

SALARIES.

The General Secretary shall be paid the amount of his salary in quarterly instalments upon the first days of October, January, April, and July, respectively; and he shall draw upon the Treasurer at his discretion such sums as may be allotted by vote of Council for clerical assistance.

OFFICERS OF THE ASSOCIATION.

1907-1908.

President, JOHN HUSTON FINLEY, Ph.D., LL.D., College of the City of New York.

Honorary President, FRANK B. SANBORN, Concord, Mass.

First Vice-President, HON. OSCAR S. STRAUS, LL.D., New York City.

Second Vice-President, HON. FREDERICK J. KINGSBURY, Waterbury, Conn.

Vice-Presidents.

HON. SIMEON E. BALDWIN, LL.D., New Haven, Conn.

Prest. DANIEL C. GILMAN, LL.D., Baltimore, Md.

HON. WILLIAM T. HARRIS, LL.D., Washington, D.C.

Prest. J. B. ANGELL, LL.D., Ann Arbor, Mich.

HON. A. D. WHITE, LL.D., Ithaca, N.Y.

HON. JOHN EATON, Washington, D.C.

Mr. GEORGE WESTINGHOUSE, LL.D., Washington, D.C.

HON. SETH LOW, LL.D., New York.

HON. JOHN W. FOSTER, LL.D., Washington, D.C.

Mrs. CAROLINE H. DALL, LL.D., Washington, D.C.

GRACE PECKHAM MURRAY, M.D., New York.

H. HOLBROOK CURTIS, M.D., New York.

Rev. F. G. PRABODY, D.D., Cambridge, Mass.

Prof. GEORGE L. RAYMOND, L.H.D., Washington, D.C.

Mrs. VIRGINIA B. MCKELWAY, Brooklyn, N.Y.

HON. C. A. WOODS, Marion, S.C.

Rev. JOSEPH ANDERSON, D.D., Waterbury, Conn.

General Secretary, ISAAC FRANKLIN RUSSELL, D.C.L., LL.D., 120 Broadway, N.Y.

Treasurer, W. C. LeGENDRE, 59 Wall Street, New York.

Directors.

President CHARLES W. ELIOT, LL.D., Cambridge, Mass.

HON. ST. CLAIR MCKELWAY, LL.D., L.H.D., Brooklyn, N.Y.

BOOKER T. WASHINGTON, LL.D., Tuskegee, Ala.

HON. CARROLL D. WRIGHT, LL.D., Worcester, Mass.

EUGENE SMITH, New York City.

HON. CHARLES S. HAMLIN, Boston, Mass.

President HARRY A. GARFIELD, Williamstown, Mass.

Dr. ALBERT SHAW, New York.

Department Officers.

I. *Education and Art*.—Prof. SAMUEL T. DUTTON, New York City, *Chairman*; Prof. PAUL MONROE, New York City, *Secretary*.

II. *Social Economy*.—JOHN GRAHAM BROOKS, Cambridge, Mass., *Chairman*; JOHN MARTIN, New York City, *Secretary*.

III.—*Jurisprudence*. HON. CHARLES BULKLEY HUBBELL, New York City, *Chairman*; Prof. ISAAC FRANKLIN RUSSELL, New York City, *Secretary*.

LIFE MEMBERS.

Extract from Constitution: "On payment of one hundred dollars any person may become a Life Member, exempt from assessments."

- | | |
|---|---|
| Angell, Mr. George T., 19 Milk St., Boston, Mass. | Sanborn, F. B., Concord, Mass. |
| Baldwin, Hon. S. E., LL.D., New Haven, Conn. | Sanborn, Mrs. Louisa L., Concord, Mass. |
| Barnard, Mrs. James M., 140 Beacon St., Boston, Mass. | Smith, Prof. Goldwin, LL.D., Toronto, Canada. |
| Blatchford, Mr. J. S., Boston, Mass. | Stokes, Mr. Anson Phelps, 45 Cedar St., New York City. |
| Bradford, Mr. Gamaliel, 502 Beacon St., Boston, Mass. | Stokes, Mr. I. N. Phelps, 47 Cedar St., New York City. |
| Dodge, Mr. Charles C., 33 Broadway, New York City. | Stokes, Mr. Thomas, 47 Cedar St., New York City. |
| Dodge, William E., Jr., 99 John St., New York City. | Straus, Hon. Oscar S., LL.D., 42 Warren St., New York City. |
| Eliot, Mrs. Samuel, Boston, Mass. | Villard, Mrs. Henry, 145 W. 38th St., New York City. |
| Endicott, William, Jr., Boston, Mass. | Ward, Mr. J. Q. A., 119 W. 52d St., New York City. |
| Hermann, Mrs. H., 59 W. 56th St., New York City. | Ware, Mr. William R., 130 E. 27th St., New York City. |
| Hoyt, Hon. J. W., The "Victoria," Washington, D.C. | White, Hon. Andrew Dickson, LL.D., Ithaca, N.Y. |
| James, Hon. D. Willis, 45 Wall St., New York City. | Wolcott, Miss Ella L., Elmira, N.Y. |
| Kingsbury, Hon. Frederick J., Waterbury, Conn. | Young, Mr. J. Edward, 130 William St., New York City. |
| Letchworth, Mr. W. P., Portageville, N.Y. | |
| Libbey, Mr. Jonas M., New York City. | |

HONORARY AND CORRESPONDING MEMBERS.

In America.

Moncure D. Conway, Esq., 22 E. 10th St., New York City.
Prof. J. Irving Manatt, Providence, R.I.
Major-Gen. O. O. Howard, Burlington, Vt.
Edmund A. Meredith, Esq., care The Toronto Income Trust Co., Yonge St., Toronto, Can.
Hon. Domingo F. Sarmiento, Buenos Ayres.

In Great Britain and Ireland.

Lord Radstock, London.
Alfred Field, Esq., Birmingham.
Thomas H. Barker, Esq., Manchester.
Henry W. Acland, M.D., F.R.S., Oxford.
Miss Louisa Innes Lumsden, Glenbogie, Rhynie, Scotland.
Miss J. Frances Dove, Wycombe, Abbey, Bucks, England.

Lord Hobhouse, 15 Bruton Street, London.
Rt. Hon. James Bryce, Washington, D.C.
Geoffrey Drage, Esq., London.

In France.

M. August Laugel, 12 Rue de la d'Anjou, Paris.
M. Emile Cacheux, 25 Quai St. Michel, Paris.
M. F. Buisson, Bd. 163 Montparnasse, Paris.
M. Emil Levasseur, 24 Rue Monsieur le Prince, Paris.
M. Arthur Raffalovich, 19 Avenue Hoche, Paris.
M. Pierre Claudio Jannet, 22 Rue Oudinot, Paris.

In Italy.

Signor Martino Beltrani-Scalia, Rome.
Prof. C. F. Gabba, Pisa.

LIST OF ANNUAL MEMBERS, 1907.

[NOTE.—With reference to this enrolment some explanations are essential, and they are as follows:—

The "National Institute of Arts and Letters," organized under the auspices of the American Social Science Association, but now an independent body, still retains a certain connection with the Association in the form of Associate Memberships. The following clauses from vote passed at the Saratoga meeting of the Association define the existing status:—

Voted, That the members of the Institute be *ipso facto* associate members of the Association in return for the courtesy of the Institute in making members of the Association associate members of the Institute.

In the list subjoined, such associate members are marked with a *star*. In the matter of academic titles, such only are given as are known. Members are earnestly solicited to communicate with the editor at once respecting academic titles, and also to correct any errors which may be found upon the roll. All resignations should also be promptly reported to the General Secretary, Isaac Franklin Russell, 120 Broadway, New York City.]

- | | |
|--|--|
| Abraham, A., 800 St. Marks Ave., Brooklyn. | Anderson, Warren E., Pensacola, Fla. |
| *Adams, Henry, 1603 H St., N.W., Washington, D.C. | Anderson, Winslow, M.D., 1220 Sutton St., San Francisco. |
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| Agar, John G., 31 Nassau St., New York. | Andrews, Hon. Charles B., LL.D., Litchfield, Conn. |
| *Alden, Henry M., care of Harper & Brothers, New York. | Anthony, Prof. Wm. A., Cooper Union, New York. |
| Aldrich, Charles F., Home Insurance Building, Chicago. | Archer, Frederick, Carnegie Institute, Pittsburg, Pa. |
| Aldrich, Nelson W., Providence, R.I. | Ashley, Prof. Clarence D., LL.D., N.Y. Un. Law School, New York. |
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| *Alexander, John W., 120 Broadway, New York City. | Ashmore, George C., M.D., 794 Republic St., Cleveland, Ohio. |
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| Ames, James Barr, LL.D., Cambridge, Mass. | Ayers, Howard, University of Cincinnati, Cincinnati, Ohio. |
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| Anderson, Rev. Joseph, D.D., Waterbury, Conn. | Bacon, Hon. Robert, Washington, D.C. |

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 Benedict, E. C., Greenwich, Conn.
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PRESIDENT JOHN HUSTON FINLEY, LL.D., called the convention to order at 8.15 P.M.

PRESIDENT FINLEY.—*Ladies and Gentlemen*,—In opening this session of the American Social Science Association, I have the great pleasure of presenting to you his Honor, the Mayor of this city. It would be superfluous if I were to attempt to introduce Mayor Adam to you, he is so well known to all of you. Let me say merely this, that I have come from the other corner of the State, and I am glad to come all this distance, if there were no other reason, for the sole purpose of meeting the Mayor. I have now the pleasure of presenting him to you. [Applause.]

Mayor Adam then delivered his address of welcome.

SPEECH OF MAYOR ADAM, WELCOMING AMERICAN SOCIAL SCIENCE ASSOCIATION.

BUFFALO HISTORICAL SOCIETY BUILDING, DELAWARE PARK,
8 P.M., WEDNESDAY, SEPT. 11, 1907.

Mr. President and Members of the American Social Science Association,—It affords me great pleasure as Mayor to welcome you to Buffalo, and to extend to you its hospitality. I trust that, when you adjourn, you will carry with you agreeable impressions of our city and happy reminiscences of your visit.

Though we have from time to time many social, fraternal and industrial bodies gathering here in convention, seldom have we an assemblage of so many men and women who have rendered distinct service in the cause of education, art, science, letters, medicine, jurisprudence, and industrial development as are comprised in your membership.

We are glad you have honored us by holding your Annual Meeting in Buffalo. Our people are interested in the subjects which are down for discussion in your programme, and which are engaging the attention of master minds throughout the world. We have to look to those who dwell apart for instruction. We in the rank and file, who are fighting the battle of life, doing the duty that lies nearest in the best way we can, do not always know how the struggle is going, and have to look to the leaders who sit on the eminences to tell us whether or not peace is near. We seek your guidance.

It has been said that "socialism is industry of the people, by the people, for the people, that it is coming and will not tarry, and that all is well,

'Even though thrice again
The red fool-fury of the Seine
Shall pile its barricades with dead.'"

I am impatient to hear your President's address on the American Executive, so I shall now spare you any further remarks. Welcome, welcome to Buffalo!

PRESIDENT FINLEY.—I have an added honor in acknowledging this greeting. I am greatly disappointed that there are not more members of the Association here to hear it, but I can assure the Mayor that many will have heard it before the vibrations of his welcome have ceased.

I am informed by the aged Secretary—for I am somewhat of a new-comer in this society—that this is our forty-fifth consecutive annual meeting. I am told that this is one of the largest initial gatherings that the Association has held in many years. It is the pioneer Association in this field, and is the parent of many other associations. The American Historical Association, I am quite certain, is related to this society. The National Conference of Charities and Correction, the Economical Association, the American Political Science Association, which has been recently organized, the Sociological Association,—these are all children or relatives of the American Social Science Association, and we are very proud of that record. Unfortunately, three of our chairmen are prevented from being here, two by absence abroad and one by illness, and only one of our secretaries is able to be here, but I assure you, Mr. Mayor, that our appreciation of your welcome is inversely as the square of our numbers. [Laughter.]

It is announced that I am to give the introductory address. I am glad that it is not given the importance of a chapter in the body of the book. Usually, the introduction, or preface, is written after the book itself, and I should prefer this sequence, but it is forbidden by the programme. I have no knowledge of the contents of the interesting volume which is to be presented to you beyond just the word that has come to me this afternoon from Mr. Martin, who is to speak later, and so I am not able to make my remarks prophetic.

The President then delivered his introductory address.

INTRODUCTORY ADDRESS.

THE AMERICAN EXECUTIVE.

BY JOHN HUSTON FINLEY, PH.D., LL.D., PRESIDENT OF THE
ASSOCIATION.

This is announced as an "Introductory Address." I am glad that it is not to be given the importance of a chapter in the body of the book. Usually, the introduction or preface is written after the book itself, and I should prefer this sequence, but it is forbidden by the programme. I have no knowledge of the content of the interesting volume which is to be presented to you in the sessions of this historic Association. I am not able, therefore, to make the introduction prophetic. What I have to say must, as a result, be in the nature of an anabasis—a going up—to the themes which are to engage your attention in these three days.

I have taken "The American Executive" as the subject of this address. I have done so because it has been one of especial interest to me, though it must at first seem to have no special relevancy here. But a little reflection will recall into what varied fields of the great territory of social science the voice and stride of the American Executive, in its narrowest and yet most exalted definition, have led public and official interest and activity. Some of the most important social problems lie within the official cognizance and responsibility of the Chief Executive,—to keep for the moment to the narrower meaning,—while others not contemplated by the Constitution are annexed as subjects of interest to an imperious, beneficent, and omnivorous mind. In the last annual message of our President to Congress, for example, no less than thirty matters are discussed; some of the discussions leading to legislative recommendations, as, limiting the hours of labor of railroad employees, extending the employers' liability, enacting uni-

form divorce and marriage laws, etc.; others having only an immediately educative purpose, as, the importance of the home, of technical and industrial training, the perils of race prejudice, etc. If one were to follow the messages, the interviews, the addresses, and the essays of our present President alone, one would come into a horizon well-nigh as wide as that of this Society.

But the American Executive whose functions I am for a few minutes to discuss to-night is not that single immortal collection of powers and commensurate duties which has been successively incorporated in the persons of twenty-six men and added to their respective natural attributes, but to that great host of men and women, the Chief Executive among them, who execute faithfully or unfaithfully the laws,—that is, the expressed desire or purpose of a community, a commonwealth, or the nation,—who exercise each of them a fraction of that natural right which we assume to reside in us as individuals, and who together do for us the things we yield the sovereignty of doing for ourselves, but yield that we may have the larger freedom in other doing and being.

The tripartite nature of our government is the initial constitutional fact from which all such expositions are wont to proceed. And the theory that the independence of each of these three parts is vital to the maintenance of a free government has been stoutly held, in the thought that, if the executive control the legislative, tyranny is potentially present in office, and, if the legislative possess the executive, anarchy may sit alternately with tyranny. "Modern political science has, however," says one of our most reliable authorities on administration, "generally discarded this theory, both because it is incapable of accurate statement and because it seems to be impossible to apply it with beneficial results in the formation of any concrete political organization." But while the machinery of Federal government set up by our fathers did not literally and accurately follow the maxim of Montesquieu, did not confine the executive machinery to purely executive functions, giving it, as it did, a legislative opportunity which, under a President whom this city should proudly remember, became a legislative obligation, and while it did not confine the legislative machinery to the manufacture of laws only, but added a

device for the control of the executive discretion and power; it was designed beyond question that the essential powers belonging to each department should be maintained by it against encroachment. It should be of interest to know whether changes have occurred and whether there is any impairment or perversion of any of these agencies or any peril.

The executive has grown numerically to be the overwhelming department. A few paid legislative officials give expression in laws or ordinances to what is, presumably, the common wish of those whom they represent; and a few judges settle controversies between individuals or between individuals and the governmental authorities as to the application of these laws. But those whose service is distinctly executive are as a host, for the most part invisible, camped about us.

Think for a moment who constitute that host and to what extent we have let the State do for us what our fathers did for themselves or left undone.

We begin with one of the lowest type of the executive, the public gatherer of garbage and refuse in the streets (and how important a member of this great army he is our recent experience in New York has revealed). Then there are: the street-sweepers, to whom temporary sovereignty is given over what each householder once performed for himself; the commissioners of streets and the overseers of highways (the modern *pontifices*); the lighters of lamps (the public priests of Vesta); the policemen, the mail carriers, the carriers of water, the measurers of the winds, public physicians and nurses, coroners and they who bury the dead, chaplains even, teachers and librarians and scientists and printers; assessors and collectors and treasurers and comptrollers; overseers of the poor, and supervisors and superintendents of schools, hospitals, prisons, reformatories, and almshouses; presidents of village and town councils and mayors innumerable; public attorneys and sheriffs and constables and wardens, jurors and the *posse comitatus*; the militia, the army and the navy; the thousands of members of Boards and Commissions, temporary and permanent, with executive powers; Boards of Health, of Charities and Correction, of Pardon, of Prisons, of Lunacy; Commissioners of Labor, of Arbitration, of Pensions, of Public Lands, Commerce and Navigation, Agri-

culture, Game and Forests; Governors of Commonwealths, members of Cabinet, and the President, with the tens of thousands whom he virtually commands. This is a far from complete catalogue of those who constitute that great department of our government, and a far from dull catalogue it is. I can imagine how Walt Whitman might have written his *Song of Democracy* by simply linking these names together in rugged rhythm. For nearly every one of these expresses a struggle of the many to find for themselves the way to a larger freedom or a richer life,—often to secure to the few the help or instruction or protection of the many, often to give benefit to the generations that are to come after at the labor and expense of the present. Sometimes there is represented the struggle of the few to get the many to help them, the struggle of those that have to take from those that have not or to keep them from getting or sharing what they have; but it is only a pessimist who will find other than a benevolent paternalism of motive in most of these new executive activities and in the multiplication of those offices of public paid ministry. Sir Henry Maine laughs at the rhapsodies of the poet crying to Democracy in a figure of Niagara standing between Erie and Ontario, and cites the dictum of John Austin that "democracy is a form of government," as a douche of cold water for the invigoration of the poet's mind. But a "government," when translated into its motive and achievement, is certainly as deserving of rhapsody as our great Niagara.

In the Federal government the creation of new Departments, Boards, and Commissions, has unquestionably enhanced the power of the Presidential office, since they fall under the President's general direction and since to him is given the full power of removal. In the Commonwealth the executive's prerogative and influence are increased in the creation of such Boards only by the conferment upon him of power to appoint, and even that is sometimes left to the people or otherwise vested. And, even when the governor has the power of appointment, he has not, as a rule, the sole power of removal. The result is the creation of what has been termed a "fourth department of government," whose heads are responsible not directly to the

people (for they are seldom elected), not to the legislature (for it does not appoint), not to the governor (for he cannot remove).

These agencies have developed within the last two decades. As one writer has observed, before the war our problems were mainly constitutional, now they have become mainly administrative. They relate to such subjects as the control of corporations, capital and labor, methods of taxation, the promotion of health and morals, the furthering of educational, industrial, and philanthropic enterprises. The best conception of the scope and character of these agencies can be had from the mere catalogue of them, as recently arranged by some writer in a periodical, whom I am not now able to identify, else I should give him credit. First, Industrial Boards,—including boards of agriculture, dairy, food, and horticulture; inspectors of mines, oil, fish, live stock, grain, steam boilers, steamboats, workshops, factories, terrapin, scythe stones, silk, tobacco, and bakeries,—having the object of furthering special industries, promoting soil culture, protecting employees, etc. Second, Scientific Boards, including boards of health, labor statistics; the geographic and topographical survey; forestry, weather, drainage commissions; vaccine agents, and chemists,—these for the purpose of securing exact information, expert advice, and also for the enforcement of special laws. Third, Supervising Boards, including boards of arbitration; railroad, insurance, corporations, building and loan, gas, fisheries, and public utilities commissions. Fourth, Examining Boards for granting licenses to doctors, dentists, bakers, barbers, horseshoers, plumbers, etc. Fifth, Educational. Sixth, Correctional and Philanthropic. And, seventh, Executive Boards for carrying through special enterprises. These agencies find prototype in the special committees of the legislature. They cannot be a menace, except as they encourage the legislature to shift responsibility (which is seldom to be regretted, since it falls upon bodies more specifically competent for the delegated task) or they themselves degenerate into sinecures or become collusory to the dishonesty which they are created to prevent. It would be a prudent policy, I am confident, to give the governor the full power of removal and to increase his responsibility for this distinctly administrative service.

I need not here catalogue the Federal Boards, Bureaus, and Departments, interesting as their evolution is. The stages are these: a private servant or service is officialized; the individual officer becomes a bureau or commission; the bureau or commission becomes a department; and the department becomes recognized in the President's cabinet. We have recently witnessed such an evolution, and it is likely that we shall see still other departments added in time. All of which indicates the growing importance of the Executive and especially of the President as an administrative officer. And with the widening activities of the Federal government this executive power is bound to increase, for under the Constitution every superior officer is of Presidential appointment, and every officer, superior and inferior, subject to Presidential removal, with or without cause.

These new activities of government have their occasion, mainly, as has been intimated, in the complexity of our social and industrial life and in the growing sense of common responsibility for the welfare of the weak and for the restraint of avarice, brutishness, and intemperance of every kind.

Last year, in an address before the Liberal Club of Buffalo, I called attention to the dangers—menaces not to the maintenance of the balance of the executive, legislative, and judicial powers, but to the people themselves—in this shifting, not from one department to another, but to official hands and brains and backs and hearts, of duties that once belonged to the father, the mother, the child, the neighbor, the minister, the friend. In great centres, especially, is the government becoming not only paternalistic, but maternalistic and filial and fraternal in that it has come to undertake the functions which these adjectives suggest.

I have estimated that in New York City one adult in every thirty is a paid executive. If this ratio obtained throughout the country, we should have an executive body of somewhat more than a million, perhaps a million and a half, of persons, paid out of the public treasury for the "government" of the rest. In this growth and in the prospect of greater numbers there are three attendant dangers, all of which have had suggestion.

First is the danger that the executive will not do his duty, perform his task honestly, faithfully, efficiently. This danger is inherent in human nature, in its frailty, its selfishness, its laziness, its proneness to evil. It is heightened by the methods of appointment to office, the means of holding on to office, and of securing preferment. It is this danger which makes it necessary that the twenty-nine men should not let their interest cease when this thirtieth man is appointed to perform a service once of such intense private concern as to insure its well-doing. The temptation is so strong to give over to the support of public treasuries endeavors which some few in a community want carried on beyond the limits of their lives or strength or financial means, and then to leave them to less interested or efficient hands without supervision or stimulus. In the ideal state or city, men will work more zealously for the general good than for their own, and the public has many such servants now; but it is not the rule, and until it is, rather than the exception, the American executive will not be as efficient as the volunteer whose place he has taken.

Second is the danger that, though he may be efficient, he is doing a task which for the individual good should be left to the parent, the family, the neighbor. This I have already touched upon by illustration. I appreciate that the question is not to be decided upon the merits of a few concrete cases; and I know that those who want more government will remind us of the parents who have no time or moral or intellectual fitness to do what the public agent will do, of families who are better off divided, of neighbors who do more harm than good by their unintelligent neighborliness, and of millions who would live less wholesome, decent, orderly, hopeful lives, except for the help and protection and guidance of the executive.

Third is the danger that the executive, gradually enlarging its numerical strength and its political power, may become so potent as to disturb this delicately adjusted machine which we have set over us to rule us, and, controlling the law-making processes and giving trend to judicial decisions, destroy some of our liberties, disturb our peace of mind, and menace our property, however well-intentioned the executive may be.

Wishing to discover whether in the States the executive was encroaching upon the field of the legislature or, rather,

whether it was influencing legislation,—for the influence may perhaps not be properly called an encroachment,—I wrote to the governors of the several Commonwealths to inquire to what extent their recommendations had been embodied in legislation. As this inquiry was made in the gubernatorial vacation time, answers have not been received from all, but I have no doubt that those which have been received are representative. I quote a few of them without identifying the authors:—

1. "I believe the Governor's initiative in legislation is of increasing influence and important" (this in a State where the governor has not the power of veto).

2. "Of 53 matters¹ proposed by the Governor, 43 were acted upon favorably. Of the remaining 10, 4 were considered, but, on account of the inability of the two Houses to agree, were not enacted."

3. "With few exceptions, during the last two sessions of the legislature, executive recommendations were enacted into law. During the late session there were two or three notable instances in which it was not done; but these were exceptions, and not the rule."

4. "The Governor's recommendations are far more important than his veto power, and have great weight, not only with the legislature, but with the people."

5. "All the important measures urged by the Governor in 1907 were enacted into law, and many of those of 1905."

6. "I think that the Executive's recommendations are having more and more influence upon legislative action. As I have watched the condition in several States during the past few years, it has seemed to me that the Executive's influence in this particular was decidedly on the increase. Veto amounts to practically nothing" (in this State).

7. "I think almost everything depends upon the personality of the Governor. If he is a strong man and has the confidence of the people, his recommendations will have great weight with the legislature." (This governor urges that, if the governor desires certain legislation, he should see that the bill is carefully prepared, and then interest influential men in it and acquaint them with the arguments for and against.)

8. "The attitude of our Governors toward legislation is more affirmative than negative. . . . I think that a great part of the important legislation in this State, for a decade at least, has followed such executive suggestions, though it may not have been the result of them." (Ten of sixteen were followed by last legislature.)

9. "I do not believe that the office of Chief Executive is really increasing in importance in determining legislation, but there is greater harmony between the legislative and the executive in giving expression to popular demands." (Governors have given first expression to these demands, and have been followed by the legislatures.)

10. "With few exceptions the suggestions of the present Governor have been accepted by the General Assembly, and laws enacted in pursuance thereof. He has sparingly used the veto power, but has never been overruled by the legislative body" (during three regular sessions and three special sessions).

11. "Substantially every recommendation which I made in my opening address to the legislature has been enacted into law. I interposed only two vetoes, and they were sustained." (It is to be added that the subjects upon which the principal recommendations were made were issues in the preceding campaign, and the governor and legislature were in accord.)

12. "I feel confident in stating that the Executive's initiative in legislation is increasing in influence and in importance."

13. "The legislature of the present year enacted into law practically all the measures suggested by the Governor in his message to that body. I mention a few of these as indicating the general character of the legislation in several of the States: anti-pass bill, two-cent fare bill, prohibiting contributions by corporations for political purposes, primary election bill, joint freight-rate bill, child labor bill, extension of pure food law, resolution asking Congress to call convention for amendment of Constitution, so that United States senators may be elected by the people."

14. The other answer came from a governor's office in a State where the conditions were somewhat similar to those in this State. The governor and the legislature were not in sympathy, but the governor appealed to the people, and a number of his recommendations were enacted into law.

While all these answers indicate with one or two exceptions a disposition on the part of legislation to follow executive suggestion, it is apparent even from these letters that it is not a servile following, and it is plainly stated or intimated by two or three that they both follow an imperative public opinion, the governor having the first opportunity to respond, and so giving unintentionally the impression of leading, whereas he, too, but follows. It is apparent, too, that the Chief Executive has found a way of compelling legislation, while punctiliously observing the legislative limitations of his office; that is, by appealing to public opinion to make itself felt in the legislature. There is certainly no menace in the power of the Chief Executive of the Commonwealth. He has too little. Greater centralization of administrative power and unity of effort are here desirable. But at the same time it is manifest that he has ceased to be in some States, if not in all, the "mere hands of the legislative brain," as Mr. Bryce characterized him, whose merit "is usually tested by the number and boldness of his vetoes."

When we turn from the governor of a State to the Federal Executive, we find firm in constitutional authority powers which have not only brought all the administrative departments under the virtual direction of the President, but have also given him larger ordinance powers, allowed him to determine in some measure and often in large degree the character of the courts through their *personnel*, made him the sole representative of our government in intercourse with all the rest of the world, and, finally, not only given him a negative legislative function, but made it possible that with a vigorous personality, supported by popular sentiment, he should become the chief legislative agency of the nation. We have had exhibition in our history of an executive who was little more than the minister of the legislative, deprived of discretion, direction, and command; and we have had executives of the other extreme, inferentially depicted in Bagehot's definition of Congress under a presidential as contrasted with a cabinet system, a "debating society adhering to an executive,"—on the one hand, a chief sheriff, warden, agent, and, on the other, a chief magistrate with more than royal powers. And all this within the bounds of the Constitution.

It is, after all, the personal attributes, the extra-legal political organization, and the support of public opinion that give horizon to the office. The Constitution follows the President not *ex proprio vigore*, but of *his* vigor, out to the boundaries, and, when public opinion opens the gates of the legislature to the enactment of his policies, there are no barriers save those which lie about the legislative power.

The most important limitation on his administrative powers, says a well-known authority, is the restricted scope of Federal powers and Federal administration, large powers being reserved to the States; but if the Federal powers find warrant in the control of international commerce, post roads, etc., for their extension, and if these extended functions are delegated by Congress to administrative boards of tribunals, the official horizon of the Federal Executive will widen to include every activity of national scope and concern and find higher pedestal from which to reach the rest of the world.

One of the Regents of the University of New York, writing of this office recently, said in summation:—

Thus, while other departments have stood comparatively rigid and inelastic, the President has grown with the country's growth, expanded with every phase of its development, and more automatically than any other department has assumed those Protean forms required for the constantly increasing and varying demands of the Republic. And this great army, 240,000 strong in its myriad forms, is everywhere and always the President, whether postmaster in Maine, collector in Alaska, or consul at Pekin, or ambassador to Great Britain, or Chief Executive in the White House,—it is everywhere and always the President, inspiring, guiding, dominating, the irresistible onward march of this mighty and ever-expanding people.

This is, however, the same office of which one with a somewhat more accurate perspective, perhaps, said a few years ago:

Anything short of a failure deserves to be called a success, so immensely difficult is the problem of constructing a stable executive in a democratic country. It has shown no tendency to dwarf the other authorities of the State [I am still quoting from an edition by Mr. Bryce of 1891] as to pave the way for a monarchy.

And then, as if quieting all our fear as to the future, he adds, "Wherever the will of the people prevails, the legislature . . . can make itself omnipotent unless checked by the action of the people themselves."

We have no need to fear, large as the office of Chief Executive has come to be in the public eye, though his every wish seems to have the effect of a decree. The magnifying of the office carries no menace to our liberties, except as the popular opinion which makes possible that enlargement is itself a menace. If the executive seem for the time to trespass upon the legislative, it is because it represents more faithfully the will of the people or what is thought to be the will of the people. The danger is in the errancy of the will, and not in the strength of the arm with which it strikes.

The fear which I find in my own mind is not of the encroachment of the executive upon the legislative nor of its influence upon the judiciary, but of the encroachment of the executive, under legislative urging and command and with judicial sanction, upon the field of private initiative, endeavor, and responsibility. I do not fear for the independence of any one of these departments, but I fear sometimes for the independence of the individual with all this multifarious activity of the American Executive.

Sir Henry Maine said twenty years or more ago that "the Americans are still of opinion that more is to be got for human happiness by private energy than by public legislation." He could, perhaps, still make the statement with truth to-day; but, if legislation continues to relieve private energy, will not this energy some day become dormant and dependent?

I must end my introductory address with a question. It is the great question which society is asking. Perhaps we shall have some light toward the answer at this meeting.

GENERAL DISCUSSION.

[Wednesday Evening, September 11.]

DR. ISAAC FRANKLIN RUSSELL (General Secretary).—Mr. President, you are not obliged to leave immediately?

PRESIDENT FINLEY.—I regret to say that I shall have to leave in five minutes.

DR. RUSSELL.—It will not take that length of time to say what I have to say. I wanted to discuss this paper. Perhaps I may reserve my discussion till you get away, and take it up to-morrow, and, after the habit of my profession of the bar, make a preliminary statement, and an apology before that, which might be called an ante-preliminary statement. It was my business to bring to the meeting to-night a copy of our constitution and a brief leaflet setting forth our ancient history and the glories of these later days, but I forgot it, dining late with the hospitable chairman of our local committee, Mr. L. L. Lewis, Jr., at the University Club. I will have the papers here to-morrow. I want everybody here to understand that we invite the citizens of Buffalo here to all the sessions of the convention with which you have become familiar through the public prints.

Mr. Martin is to follow the President on the programme, and we will have an address by Judge Charles B. Wheeler, of Buffalo, on the subject of a progressive income tax, and an address by Martin W. Littleton, one of the most distinguished orators in our part of the State, down near the city of New York. Then we have with us some advanced socialists, who will not share the alarm that our President has expressed,—Mr. Martin and Mr. Ghent; also some of the most eminent and scholarly divines and some of the most conservative men in this State. I wish very much, for all the members of the Council and the Association, that all of you who are here present will attend to-morrow morning at ten o'clock.

PRESIDENT FINLEY.—I am empowered, as the chief executive of this Association, to name a committee on nominations. This, it seems to me, is an abuse of the executive function. [Laughter.] It gives the chairman opportunity to secure for himself a second term. It has been intimated to me that I should make certain designations, but, as I have lost the slate [laughter], I will appoint Professor George L. Raymond, the Vice-President, as one member of that committee, and Dr. Isaac Franklin Russell and Mr. Frank Hendrick as the other two.

I greatly regret that I may not longer enjoy, immediately at any rate, the hospitality of this beautiful city. My presence is imperatively demanded in New York City to-morrow morning. I had some thought of resigning my office and staying in Buffalo the rest of my life after driving through your beautiful streets this afternoon, but I suppose that I must meet my present obligations at least, so I have the pleasure of introducing

to you Professor George L. Raymond, L.H.D., formerly of Princeton University, one of the Vice-Presidents of this society, who will act as chairman. [Applause.]

VICE-PRESIDENT GEORGE L. RAYMOND.—It might be expected, inasmuch as the President of this Association has seen fit to give us a discourse explaining the duties of the President of the United States, that the Vice-President of this Association should give a discourse explaining the duties of a Vice-President of the United States [laughter], but these duties are ~~so~~ numerous and it would take such a long time to convince you that the Vice-President of the United States had duties besides travelling over the country and welcoming those who had buttermilk to offer [laughter] that I will not detain you.

I will call upon Mr. John Martin now, who is to read an essay upon "Industrial Democracy at Home and Abroad." [Applause.]

MR. MARTIN.—*Mr. Chairman, Ladies and Gentlemen*,—I shall present for your consideration what I call "Industrial Democracy, or Americanized Socialism," as a practical remedy for concrete evils, a legitimate deduction from the principles of American government, but having no necessary connection with the imported German doctrines about a class war, labor values, or other metaphysical dogmas.

Mr. Martin then read his paper.

I. DEPARTMENT OF SOCIAL ECONOMY.

I. INDUSTRIAL DEMOCRACY, OR AMERICANIZED SOCIALISM.

BY JOHN MARTIN.

I shall present for your consideration what I call Industrial Democracy, or Americanized Socialism. It is a practical remedy for concrete evils, a legitimate deduction from the principles of American government, but having no connection with imported German doctrines about the class war, labor value, or other metaphysical dogmas.

Until recently the most esteemed person in America, the business man, was comfortably certain that our body politic was immune against the virus of socialism. He considered socialism an outcome, disagreeable, but perhaps deserved, of monarchy, militarism, poverty, and other evils from which our own blessed land was free. Here, he thought, where destitute peoples from decaying Europe find a home and plenty, we need not fear the skeleton with a bomb in his hand that threatens abroad. High wages, abundant land, free opportunity, from shirt-sleeves to shirt-sleeves in three generations,—these characteristics of America guarantee us against wide-spread social discontent; while democratic government is so just and effective that it will speedily cure the slight ills that will occur, perhaps, under the best constitution.

But within the last five years this equanimity has been destroyed. Industrial combinations have been so busy, high financiers so rapacious, muck-rakers so beneficently active, and socialist teachers so energetic that the vote of the socialist party has grown to 442,000 votes upon various aspects of socialism command a large sale, and even from the White House messages are sent which the initiated declare have been borrowed from socialist documents. Clearly, a demand for

a radical overhauling of our social structure is spreading. We can no longer plume ourselves upon our immunity from the troubles that are afflicting civilized mankind. We also must answer the riddle which the socialists are putting to the nations.

First, What are the grounds for dissatisfaction? Why won't these pestilent fellows keep quiet? What is wrong with the way our institutions are working out? Have the agitators anything more on their side than a double dose of original sin? Isn't trade brisk, aren't wages high, can't every willing workman get a job? What ground is there, then, for complaint?

It must be admitted that, as I once heard one of the ablest English Socialists, Mr. Sidney Webb, assert, probably the eighty millions in the United States are better fed and housed than any equal number of the world's population in any other country or historical period. So rich are the natural resources of the land, so energetic its people, so stimulating such freedom as its institutions have conferred, that, class for class, Americans are better off, materially, than any eighty millions ever were elsewhere. Previous generations of patriots and reformers were not stupid nor dishonest. The laws they passed, the conditions they fostered, have helped the poor man, and, though among the dissatisfied, I admit cheerfully that such poverty as Horace Greeley describes in his Autobiography, in detailing his experiences as a boy and in New York City during the winters, does not oppress either farmers or city dwellers to-day. The poor are not getting poorer. I do not attach much importance to the statistics of poverty that have been collected recently, because poverty is a term ill-defined, and the statistics contain so many estimates; and estimates are guesses,—guesses made under limitations, to be sure, but still guesses. I do not ask you to accept one writer's estimate that ten million people in the United States are living in poverty, both because his method of making the estimate does not convince me and because the argument for Americanized Socialism, the variety I expound, does not depend upon there being ten millions or one million. I do not believe, either, that, as Americans, we must accept all the responsibility for the distress of the swarms in New York City, nor for the sweltering crowds around the Chicago stock-yards whose miseries are depicted in "The Jungle." We may justly assert that, if

three-quarters of a million and more is the net inflow of volunteer immigrants yearly, it is not for us to cry, "Mea culpa!" because many of them fail to win immediately that high standard of life we demand for our own circles. My admissions, you perceive, are sufficiently generous.

Further, I allow that estimates of a living wage in America, as made by writers socialistic and non-socialistic, are a testimony to the relative **material prosperity of American workmen**. When Mr. Hunter sets \$460 a year as the poverty line for families in the industrial States, he shows that he is accustomed to a high standard of well-being, as he would hardly put his figure for whole States, including great rural areas, 50 per cent. higher than Charles Booth set the figure (twenty-four shillings a week) for overcrowded London. When Mr. John Mitchell, president of the United Mine Workers, claims that \$600 a year is the minimum living wage for a miner in a rural region, he proves that the standard of living he considers normal is much higher than the anthracite workers would have been overjoyed to receive in the countries from which they came; and when Mr. John A. Ryan, the author of "A Living Wage," also declares that \$600 a year is a minimum living wage in any of the cities of the United States, he demonstrates that standards of poverty with us are creditably high, and that we are discontented with a scale of living which to the Hindu, the Russian, the German, and even the Englishman, would not seem intolerable.

I shall not try to overthrow your patriotic satisfaction in feeling, as Mr. Bryce pointed out in "The American Commonwealth," that, while you are eating, others are not going absolutely hungry.

If, then, I am not making the starvation of millions the ground of my criticism, what is the burden of my complaint? It is that, though conditions are not so bad as they have been or as they still are in other lands, they can be and ought to be, for the masses of the population, greatly improved. The wealth of the country is multiplying faster than the most daring dreamer would have predicted a century ago. As Mr. Sereno S. Pratt, author of "The Work of Wall Street," says, "In the past twenty years this country has developed more wealth than in all the preceding years since the discovery of America."

This prodigious wealth is being concentrated in a relatively **tiny** number of hands. The rich are getting richer with accelerating **velocity** and altogether irrespective of their services to the community. Mr. Spahr made a careful estimate of incomes in the United States in 1890, and came to the conclusion that 1 per cent. of the families in the country **own more** than the remaining 99 per cent.; that is, 1 per cent. of the families own more than half the wealth. Even if we agree with Mr. John Graham Brooks that our knowledge is not accurate enough to permit us to make such exact statements, we are bound further to agree with Mr. Brooks that, "if it were known what the possessions of the 125,000 richest families in the United States are, the result would be all that any agitator need ask." A writer in *The World's Work*, for whose sanity the character of the magazine is sufficient warranty, says:—

One-twelfth of the estimated wealth of the United States is represented at the meeting of the Board of Directors of the United States Steel Corporation. They represent, as influential directors, more than two hundred other companies. These companies operate one-half of the railroad mileage of the United States. They are the great miners and carriers of coal. The leading telegraph system, the traction lines of New York, of Philadelphia, and of Pittsburg, of Buffalo, of Chicago, and of Milwaukee, and one of the principal express companies are represented in the Board. (In the few weeks since this was written, the other telegraph system has been swallowed also.) This group includes also directors of five insurance companies, two of which have assets of seven hundred millions of dollars. In the Steel Board are men speaking for five banks and ten trust companies in New York City, including the three greatest banks in the country and the heads of important chains of financial institutions. Telephone, electric, real estate, cable, and publishing companies are represented there, and our greatest merchant sits at the board table.

This group controls corporations whose capitalizations aggregate more than nine billion dollars,—an amount (if the capitalizations are real values) equal to about the combined public debts of Great Britain, France, and the United States. It is this concentration of power which is significant.

Other evidence of similar character could be adduced, were it necessary. But everybody is aware that the multi-millionaire

is a product of recent growth, that a tiny fraction of the population has increased its wealth far faster than wages or professional salaries have increased, that industries covering the Continent and dominated by one or two men are phenomena of recent growth.

We cannot console ourselves by believing that at the death of the accumulator of a great fortune his property is dissipated, and its menace, by natural forces, removed. Vast fortunes have a self-multiplying power. It is well-nigh impossible to dissipate them by reckless expenditure. No man is trying more gallantly than Mr. Andrew Carnegie to scatter the golden treasure which favoring economic and political arrangements have heaped around him. Yet he has said that, despite his superb benefactions, the reservoir fills up as fast as he empties it. "From shirt-sleeves to shirt-sleeves in three generations" is a worn-out adage, and should be decently buried.

When the Homestead Act was passed, it was expected that it would establish an economic republic as a counterpart of the political republic. So long as a young man could go West, take land, and grow up with the country, there were good grounds for anticipating that his wealth would be proportionate approximately to his skill and industry. But the development of manufactures, the improvements in transportation, the exhaustion of the free land, and, above all, the unexpected development of trusts have resulted in the menace of an economic absolutism. Small groups of men dictate the prices we shall pay for the beef we eat, the oil we burn, the dairy produce, and the fruits on our tables, the iron and steel which indirectly all must use, the transportation without which none can live. Being human, they exact prices too high for the goods they control. Having monopoly power, they capitalize it. When Mr. Schwab declared that the iron mines on Lake Superior justified to-day a hundred million dollars of the capitalization of the Steel Trust, though fifty years will be needed for extracting the ore, he showed in a grand way the claim to put what price they like on their commodities which all monopolists, though perhaps less magnificently, assert.

In consequence of this concentration of economic power the people without property or with little property have small voice in determining what incomes they shall receive and how

the business of the country shall be run. Up to the present time, as I have said, the captains and generals of industry find it pays to feed the privates better than they were ever fed before. And they have not yet got control of all industry, agriculture, especially, being free, except that the railroads can make the farmer pay all that the traffic will bear. The Southern Pacific Railroad in California has sometimes extorted freight rates so heavy that the farmers succumbed, and the goose which laid the golden eggs was killed; but railroad managers are generally more enlightened, and leave the farmer enough to persuade him to grow another crop. Even the Beef Trust leaves to some cattle breeders sufficient to keep them in business. Workmen in trade unions, also, have checked economic despotism, and have been able to force wages to a living level, especially against unorganized employers; but it remains to be seen whether the Manufacturers' Association, flushed with victories over the unions, will restrain the hot-headed and close-fisted members who demand that wages shall be lowered and hours lengthened. Some trusts, like the Standard Oil Trust, while permitting no unions among their employees, boast that they keep wages high by preference. But in all cases the vast bulk of our citizens are at the mercy of the whims, the virtues or the vices, the generosity or the cruelty, of a relatively small class of financiers, which includes, in President Roosevelt's phrase, "malefactors of great wealth." Even admitting that \$600 a year is not the minimum amount requisite to permit a man to maintain himself and keep alive a child or two, yet the 60 per cent. of workers who get less than that amount are justified in asking why they should not receive much more than \$600, seeing that enough is produced to create millionaires faster than the newspapers can keep record of them.

Americanized Socialism offers a method by which there can be guaranteed to every citizen a voice in fixing the conditions of his work, the amount of his earnings, the industrial organization of the country, exactly as our political system gives to every man a part in deciding the laws under which he shall live. In the words of John Stuart Mill, one of the best of economists and greatest of men, who himself, as he relates in his *Autobiography*, was a socialist,—

What is characteristic of Socialism is the joint ownership by all the members of the community of the instruments and means of production, which carries with it the consequence that the division of all the produce among the body of owners must be a public act and performed according to rules laid down by the community.

Exactly as political injustice and oppression are remedied by political democracy, so we propose to cure economic injustice and oppression by establishing industrial democracy. In brief, we propose public ownership with perfected democracy. When the American colonies revolted against England, they were not suffering keenly in their pockets by the exaction of the tea duties. They could have paid without facing starvation. But they knew they could manage their own government to their satisfaction better than a British Parliament could manage it; and they were determined not to submit to alien rule, even if it were not starving them. Similarly, the Americans to-day, in revolting against economic oligarchy, do not need to prove that they are famishing. They simply assert that their industrial interests are too important to them to be intrusted to the absolute power of a few financiers, even if the financiers were high-minded; and recent revelations have led them to doubt the high-mindedness of the men who control battalions of dollars. They can no longer reverence Mr. Rockefeller and Mr. Harri- man as high-souled patriots.

How do the opportunist socialists for whom I speak propose to effect the change, to transfer control over the production and distribution of wealth from the few to the whole? By continuing with increasing velocity along the road which most civilized nations have started to travel. For, startling as it may sound to good Spencerians and Jeffersonians, even America has entered upon socialist paths. As the greatest school superintendent in the country said to me recently, "Our whole school system is socialism." Perhaps, more accurately, it should be called Communism, since it is free to all; and socialism does not propose to make food and clothing free. Our post-office system is a bit of socialism. There is no Wall Street gambling in post-office stock, no millionaires are created by it, and its employees' wages and conditions of

employment are fixed by public authority. All our factory laws and child labor laws are socialistic, for they all imply the public control of industry. Just so far as they go, they limit the power of the private owner over his business. The Federal government is investing a million dollars a month on irrigation in the West, making the wilderness to blossom like the rose. Schemes already started will make fruitful no less than 3,221,900 acres now desert. In connection with one scheme the *Official Record* mildly remarks—as if the fact were not unusual—that a cement mill has been erected and is being operated by the government for the supply of the immense quantity of cement needed for the dam. All this is socialism,—quite an appreciable dose of it. But the most hardened individualist is not bewailing this entrance of the government into business on a large scale. It pays handsomely. Private enterprise, encouraged by the Carey Act, was unequal to the task. It left the desert lands dry and the farmers and eager settlers helpless. But the National government and the State governments are putting through vast engineering schemes, one alone in Idaho costing \$11,000,000, which are redeeming whole empires and will be paid for by the settlers on the lands reclaimed, who will afterwards manage the irrigating works co-operatively.

Our Federal and State Agricultural Departments are partly socialist, partly communist. Enormous sums are being spent by the governments for improving crops by importing new varieties of seeds, by composing and distributing literature, by maintaining studs of horses and herds of cattle, and by giving advice and expert help free to farmers. Few Americans realize that the socialist activity of the government of these United States, its entrance into industry, its paternalistic meddling, as the critics would call it, are responsible for the introduction into this country of sorghum, a crop now worth \$40,000,000 a year; Durum wheat, worth annually \$10,000,000 (it costs \$10,000 worth of socialism to get it started); alfalfa, one of our most important crops; the navel orange, worth many breakfast foods; Japanese rice and bamboo; Corsican citron, the Indian mango, the Bohemian horseradish, the German brew barleys, Spanish almonds, French prunes, Chinese mustard, and Egyptian cotton. In three years

four thousand novelties have been brought to this unsuspecting land by a socialist department which is disguised under the innocent name of the Bureau of Seeds and Plant Introduction and Distribution. Every one of these plant novelties might be labelled "Due to socialism," for, had the ancient theory prevailed that the sole function of government is to keep order, these varied products would still be strangers to American territory.

Farmers can get governmental aid in almost any emergency, and their demands are innumerable. At every stage of their business they find some State or Federal department or some agricultural college ready to help them, and they seek the help unblushingly. This is enough to make Herbert Spencer turn in his grave and moan out warnings against the ruin of the farmer's manhood. But the farmer himself appears unaware of his degradation. He continues one of the most independent, sturdy, upright factors of our population. He is quite unable to see why old-fashioned theories should prevent the co-operation of all the people, through their government, for the multiplication of the crops on which all depends.

Our Forestry Service is a splendid bit of socialism. It is cultivating the forests to make them more than self-supporting and checking the fatally profligate destruction of the timber which private exploitation demands. No socialist enterprise in the world surpasses it in size and value. The area of our one hundred and fifty-three national forests is 231,250 square miles,—an area double the area of Great Britain and Ireland and equal to the area of Great Britain, Ireland, Greece, Switzerland, Belgium, Servia, Denmark, and Costa Rica combined. Our children and children's children will have timber for their uses only because this vast territory has been put under socialist management by a republican government.

All our coast lighting, our river and harbor dredging, and our internal improvement schemes are socialistic; yet would anybody seriously propose to leave this work to private enterprise? Private contractors broke down in dredging the new channel past Sandy Hook in New York Harbor; but the government, reckless of the musty proofs that it could not possibly manage any business enterprise, went ahead with the work itself, and last month, before the estimated time for the

completion of the work, ocean liners traversed the channel. So successful, indeed, have been the Federal engineers that to them has been intrusted one of the greatest undertakings of modern times, the building of the Panama Canal. It was impossible to get private contractors to undertake the work upon terms which would have safeguarded the public interest. But, since these officers of a socialist department, the Army and Navy, have been put in charge, the dirt has begun to fly. As if to show contempt for antique theories, the government is to-day operating the railroad across the Isthmus and a fleet of ships which runs from Colon to New York. No wonder Mr. E. H. Harriman is angry; but the body of the people, who have no ambition to pocket railroad systems, indorse the President's action.

New York State has just embarked upon an enormous socialist undertaking, at the behest chiefly of the business men of Buffalo and New York City. It is spending one hundred and one million dollars in enlarging the Erie Canal. It is proposed to make the canal toll-free, which will be flat communism; yet the prosperous merchants of the great cities at its terminal make no objection,—perhaps because they will most directly profit from the undertaking. Most of our cities manage their own sewer and water systems, undeterred by the fact that private corporations would have done the service, at a price, and might have made fortunes for some lucky promoters out of it. So utterly have we lost faith in the self-regulating power of competition and private enterprise that, in our perplexity over the steam railroad problem, none but a few railroad presidents, whose opinion has lost the sanctity of an earlier time, dare argue in favor of letting the roads alone. This year has produced a prolific crop of railroad laws, every one of them a repudiation of the once all-powerful doctrine of *laissez-faire*. With an inconsistency truly Anglo-Saxon, America, while shuddering at the name Socialism, has been wisely busy in many directions applying the socialist remedy to her social ills.

Though our actions have been wiser than our theories, we are not ahead of other countries; for abroad the adoption of bits of socialism has been as rapid as in America. Most civilized countries own and operate their steam railroads,

including Germany, Belgium, Switzerland, Austria-Hungary, Holland, Italy, Norway and Sweden, Russia, Japan, Australia, and New Zealand. Ability to operate railroads as a public property is fast becoming as much a test of civilization as the ability to wear evening dress gracefully. Of all countries in the world, say authorities like Professor Meyers, of Wisconsin, and Professor Parsons (the author of the most exhaustive study of railroads published in this country), Germany has the most democratic management of its railroads. There, the lines being government property, the service is unsurpassed anywhere (note that, you vacationists, who waited a fortnight for your trunks), and the rates are fixed by commissions on which chambers of commerce, farmers' organizations, trade unions, and other citizen bodies are represented. What a transportation heaven it would be if the rates and fares of the New York Central were subject to revision by representatives of the Buffalo and New York Chambers of Commerce, the State Grange, the State Federation of Labor, and such bodies! The telegraph and telephone systems, as well as the express business, are also public services in most of these countries, so that arbitrary increases of rates and irritating strikes are almost unknown. For the sake of cheap and uninterrupted service and well-treated employees, they dispense with the multi-millionaires, the Newport gayeties, and the Express Company senators which our privately owned systems supply.

Cities abroad have municipalized their gas and electric lighting plants, their street railways and allied services, to their own satisfaction and much profit. Had we done the same, perhaps two or three of the marble palaces in New York and Philadelphia would not have been built, and the press would have been robbed of some of its spiciest divorce scandals; but, for compensation, hundreds of work-girls might have taken a week's vacation on the savings from reduced fares, and thousands of strap-hangers might have had seats.

German cities have bought and manage great tracts of land, upon the suggestion of the Prussian government, that the unearned increment may not go to individuals nor frowzy suburbs disfigure the city. Other cities tax the unearned increment; while we, in our senseless generosity, make a free gift

of two hundred million dollars annually to the ground owners in New York City alone.

New Zealand guards against the robberies that have been perpetrated here by directors of Industrial Insurance Companies, and guarantees to the wage-earner his insurance at cost by doing the business itself. It has broken up monopolistic land estates, which it leases to home founders, loaning money at low rates to enable them to settle, and guaranteeing them against railroad oppression by giving them a share as citizens in the management of the lines. Germany assures its work people against sickness, accident, invalidism, and death by a socialist scheme which throws the cost mainly upon the industry and the State; while we, with a butchery bill on railroads and in factories and workshops unequalled elsewhere, make no provision for the slaughtered innocents. In all countries, experiments in socialism are being tried, and the instances in which public ownership and control have given way to private ownership are as scarce as roses in January.

At this point, however, I must insert a warning. I have said that Americanized Socialism is a mixture of public ownership and democracy. Where democracy is not, there also true socialism is not. Russia operates its railroad lines, but not democratically,—not to give the best service at the lowest cost for everybody. Russia has a governmental monopoly of spirits and of sugar; but these monopolies are managed by a stiff-necked bureaucracy, to extract revenue for propping up a vile despotism. That is not socialism.

Further, governments must pay in bonds for the railroads and other industries which they take over into public ownership. If the roads are run in perpetuity with the interest on the bonds as the first charge, a select set of coupon-cutters will be installed. That would be very partial socialism. Just as the aim of political democracy is to confer all political power upon the citizens with no man left superior to the law which all help to make, so socialism aims to confer the whole national product upon the citizens, with no man left superior to the law of work to which all must submit. How can this be constitutionally and peacefully accomplished? Here President Roosevelt and Mr. Andrew Carnegie come to our assistance, and we

welcome them into our select society. They both propose the imposition of a graduated inheritance tax, with the new purpose, not to support the necessary State activities, but to equalize fortunes. Mr. Carnegie, having had unique experience of the impossibility of disbursing a huge fortune during life, proposes that the State shall relieve him and other burden-bearers of as much as seventy-five per cent. of their possessions at death. We are compelled to accept his evidence without corroboration, for none of us can expect to repeat his experience, willing as we might be for State reasons to try it. Already such graduated death duties are levied in Great Britain and other lands, though not so drastically as conservative Mr. Carnegie recommends. The proceeds of such a tax applied to paying off the holders of the bonds issued for the purchase of trust properties would thus gradually leave them free and clear public possessions. If, in addition, we adopt the admirable suggestion of the most sanely socialistic man who ever occupied the White House (remember, ye Republicans, that the Protective Tariff is a colossal attempt at the public control of industry, so other Presidents have not been without a tiny socialist taint),—if, I say, we adopt Mr. Roosevelt's recommendation and impose also a graduated income tax, we shall have the weapons for transferring painlessly and legally from private to public possession all the surplus wealth we need from time to time for the purchase of industrial plants. Meanwhile by more drastic factory laws, by enforced settlement of strikes and lockouts through arbitration, by closer regulation of immigration, by tackling the unemployed problem during the next trade depression, by extending city ownership, by trying (unsuccessfully) to control the privately owned railroads, by narrowing the wicked ways of high finance, etc., we shall put ourselves in training for the more thorough remedies.

Our speed will depend entirely upon the immoderation of trusts and financial magnates and upon the education of the public. If the economic monarchs are scornful of laws and corrupting of law-makers, if they prefer bribing courts to doing justice, if they continue to steal millions by stock rigging, if, in the intoxication of power, they foist commodity prices out of all reason, if they continue to scandalize the world as they have been doing these latter years, then, possibly, swift ven-

geance will come upon them, and a revolution be effected right speedily. But, most likely, step by step will be taken somewhat slowly, the promoters stoutly protesting to high heaven at each step that they are not wicked socialists. A revolution over night is, in the nature of the case, impossible, but how fast the steps will be made will depend upon the intelligence and insistence of our voters. In the inertia and lack of cohesion of those voters lies the best hope of the economic despots. For all through I have imagined I heard you saying, "This man must be unaware of the unspeakable inefficiency of many American city governments, the heart-breaking disappointments of our democracy." Yes, I am as disappointed as you with the failures of democracy, as conscious as the *New York Evening Post* of democracy's unforeseen depravities and ineptitudes. Yet, with all its shortcomings, has it not secured a larger measure of justice and opportunity for the unprivileged man than did any system of government before it? It is not perfect, it is woefully full of faults; but was ever a system perfect? Did ever kings and lords, bureaucracies and oligarchies, rule as justly through a century as this partial American democracy has ruled? Similarly, I do not need to prove that the whole people could manage their manufactures, their commerce, their agriculture, their finance, without faults. The management of to-day is not so perfect that we need require guarantees of perfection before we change. Perhaps, if our cities ran street railways, they would sometimes employ more men than were necessary for the work; but that kind of extravagance would be picayune compared with the looting of the lines by the injection of watered stock, hundreds of millions of dollars worth at a time, which seems to be a necessary concomitant of private manipulation. Our post-office may lose for some years large sums through making bad bargains with the railroads; but the loss to the country is trifling compared with the subsidy of hundreds of millions exacted by the steel monarchs when the "United States Steel Corporation" was reared.

It is not incumbent, then, upon me to show that the democratic management of industry would be perfect. At the same time I admit that the democracy must prove its competence to make the industries at least self-supporting. Clearly, the

industries could not live on each other any more than a population could subsist by giving each other tips. And, therefore, it will be needful to proceed by the scientific method, the method of experiment, Nobody knows yet exactly what will be the machinery through which a democratic industrial republic will operate. We shall learn as we go along. Already we are experimenting. For city services, commissions are now favorite devices. Sometimes their heads are removable by the mayor, sometimes they are appointed by city councils, sometimes they are responsible to the State Governor. The Galveston Idea is one of our newest inventions, and is now being eagerly tried in several cities, exactly as a manufacturing invention is tested in different factories. We are gradually creating a civil service system adapted to American conditions. That is one of the prerequisites to successful socialism. Members of our Civil Service Reform Associations, Mugwumps and Goo-Goos though we be, are pioneers of Americanized Socialism, though they would be shocked, many of them, to learn the fact. They are building better than they know. Even our purely political machinery is being constantly remodelled to suit it to changing conditions. We have not yet developed manageable political machinery for the rule of large cities. There is no royal road to the industrial republic any more than there has been to the political republic. "This kind goeth not forth but by much prayer and fasting." All through America's history, from the landing at Jamestown right down to 1907, patriots have been thinking, sweating, fighting, to get political power exercised for the common good. So, probably, through many decades patriots will need to think, to work, to fight, for the transfer of economic power to the people and its exercise for the common good. But the end is worth the struggle.

DISCUSSION.

VICE-PRESIDENT RAYMOND.—The chair will be very glad indeed to hear any expressions of opinion on the part of any who are present.

DR. RUSSELL.—Mr. Chairman, it is rather late, and the only object I have in speaking is to coax somebody else to speak more worthily either to-night or to-morrow. Judge Wheeler is going to speak to-morrow from the legal standpoint of this drastic suggestion of a graduated inheritance

tax, and I am sure that you will all be gratified to hear what he has to say. Now you know from what we have presented here already that our discussion is interesting and instructive, and I ask you to bear me witness that, instead of being broadly philosophical, it is exactly scientific. Mr. Martin's penchant for exact statement can only be compared to the methods of those writers who give us the exact candle-power of the illumination that we have at Niagara Falls, or, in exact figures, the precise horse-power of the immense energy that is going to waste every second over the crest of that cataract. So you will hear scientifically rather than in a broad philosophic spirit about the topics that are under discussion.

I did want to say one thing about Dr. Finley's address,—simply that it should not be overlooked, and that some one might perhaps be encouraged to bring some more valuable contribution to-morrow,—that there seems to be a revulsion in these later days in favor of despotism and against democracy in municipal government. I notice that particularly in Brooklyn. One of my first votes was cast for Seth Low. He was elected and re-elected mayor of Brooklyn, as you know, and became mayor of the city of New York. His method was to require the resignation in advance of each of the great commissioners at the head of the bureaus that make up our municipal government,—schools, police excise, street cleaning, etc. He said: "Would you like to serve under my administration? If so, write out your resignation and give it to me, and I will appoint you." So, when he wanted to get rid of an undesirable incumbent, he simply wrote, "Dear Sir, your resignation is accepted," and then appointed somebody else. [Laughter.] That worked to the great betterment of municipal government, and, while I have not been able to vote for Mr. Martin, who is a politician, as you know, he has my esteem and affection as a member of our Association. I recognize that we have peculiar conditions in the city of New York. If we only had Mayor Adam there instead of Tammany Hall, I don't doubt that I would be in favor of voting to him in a municipal campaign everything in the shape of executive power that we have in sight. [Applause and laughter.]

Now I am not speaking to instruct you, but to ask you to come here to-morrow and get this literature which in my stupidity I left at the hotel, and bring your friends with you. I can promise you that these meetings will continue to be worthy of the attention of the best citizens of Buffalo. We appreciate very much the large attendance that is out on this stormy night.

VICE-PRESIDENT RAYMOND.—We shall be very happy to hear from any one else.

MR. THOMAS FITTON, of Buffalo.—Mr. Chairman, I will try to make some criticism of the able address of the lecturer [Mr. Martin]. In speaking of the enlargement of the Erie Canal, he calls it communistic. Well, it would be if all the expense of enlarging that canal were taken out of the taxes year by year, and no bonds issued and no chains forged for the citizens of New York State; but, in fact, the interest-bearing bonds issued are chains of slavery forged on those who pay the interest.

I was listening anxiously for the lecturer's idea as to how the socialist republic would be inaugurated. The Socialist party is trying to change the mind of the people who vote. The vast majority of the people who vote have capitalistic minds. A Socialist has a Socialist mind. The two things are as opposite as the east is from the west. The man with a capitalist mind believes that capital should rule. The man with a Socialist mind believes that man should rule, and not capital. The task of the Socialist orator is to change the mind of the people from the capitalistic to the Socialist mind. The industries are concentrating now in a few hands; that is, the ownership is concentrating, and the owners have nothing at all to do with carrying on the business. Business is carried on by hired help. A man is put in charge of a large establishment,—a man who has proved his capacity to fill that position. One thing is said to him only: "Manage that. We want profits." There is nothing more to it. He has risen up the ladder of management to that point, and that is the only thing they ask of him,—profits, nothing else. They do not say to him to do his work with humanity. If he can kill fifty men a year in his establishment and make profits, that is all right. When the industries of this country have concentrated sufficiently to impress the people so as to change their minds to socialistic minds, they will elect a Socialist Congress at Washington, and that Congress will say to these men, "You have stolen goods in your possession." In the West, when the pioneers were there, if a man stole horses or cattle, they chased after him, they found the stolen goods in his possession, and took them from him. What did they do with the man? They got a rope and hanged him on a tree. Now that man had no need to steal those horses at all. He could have lived without them. But the men who own the great corporations of this country had to steal them. If they didn't steal them, somebody else would. They had to steal those corporations, the people's property, or go to the poorhouse. There was no alternative. Now a democracy is always generous, and, when the democracy of this country becomes a Socialist democracy, it will be generous with these men. It will say: "You have done well, you have done nobly, we will pension you off; but we will run this business for the benefit of every individual in the country." Every man, every woman, in this country, shall enter into his and her inheritance as a child of God. He shall receive the benefits of advanced civilization, the development of industry, and all the rest of it; and the amount of the pension to each individual shall be the total amount he has been receiving for the last five years, the amount of the average production of each individual in the country, which at present is \$2,400 a year,—a full pension, just and right, you understand: it shall be a standard of right,—and he shall receive that, and no more.

DR. RUSSELL.—Mr. Chairman, I want to announce that Mr. Ghent's paper announced for to-morrow morning will be a reply from the orthodox Socialist standpoint to all the propositions advanced in Mr. Martin's paper.

2. LABOR LEGISLATION, NATIONAL AND INTERNATIONAL.

BY DR. A. F. WEBER, NEW YORK STATE DEPARTMENT OF LABOR.

Indications are not wanting that the present movement for the governmental control of monopoly and the curtailment of special privileges has nearly attained its height. Two of the States, New York and Wisconsin, have created commissions endowed with ample authority to control the most powerful of all the corporations (those operating public utilities), and it will not take long to bring the legislation of the nation and of the other important Commonwealths abreast of New York and Wisconsin. These new commissions will assume no inconsiderable portion of the work heretofore thrust upon the legislatures. Already has Governor Hughes announced his belief in the practicability of biennial sessions, although the New York legislature has recently held four sessions in two years. And the speaker of the Assembly, himself a young man of the progressive rather than the reactionary type, has recently told the people that we have too much "law-making." Both the governor and the speaker have called attention to the unnecessary bulk of local and special legislation, which constitutes so large a proportion of the annual output of statutes. It can scarcely be doubted that we shall sooner or later transfer the supervision of local administration to State boards or commissions, just as we have done in the case of the quasi-public corporations.

But, with all the relief afforded the legislature by central boards of control, there will remain important matters of policy for it to determine, and not the least of these will be additional enactments for the protection of wage-earners. Even should our labor bureaus and factory inspection departments receive the ordinance power, and use it as extensively as they do in all European countries, there will remain, at least for many years to come, the necessity of enacting fundamental laws to serve as the basis of administrative regulations and ordinances. In many respects the labor legislation of this country is twenty

years behind that of competing countries, including such conservative nations as England and Germany; and, while the present year almost recalls the notable period of 1886-87 in the progress made in certain directions, it has, after all, done little to close the gap between us and Europe.

The causes of the relative backwardness of this country in extending legal protection to the working classes might be discussed with profit, if time permitted. The explanation frequently given is the newness of our mechanical industries; but this explanation overlooks the fact that the factory system was developed in the United States at an earlier date than in Continental Europe, while the growth of our railways, which began very soon after that of England, quickly outran that of the mother country, the parent of labor legislation. The fact is that Americans were bred to a philosophy of Individualism that looked askance at any governmental interference with personal liberty. The American habit of thought was determined by the predominating agricultural character of the country. The circumstances of the farmer, as well as the lawyer who controlled the making of laws, were so entirely different from those of the industrial wage-earner that neither class could see the need of proceeding on a new principle. The consequence was that the promotion of labor legislation was left mainly to the laboring classes without the assistance and guidance that they should have had from the professional classes. In the one branch of labor legislation that enlisted the sympathies of all classes of citizens,—the protection of children,—the United States has not only kept pace with Europe, but has in many places gone far beyond any foreign legislation, as is illustrated in the eight-hour laws of New York, Illinois, Nebraska, and Colorado, applying to children under sixteen years of age employed in factories and various other occupations. The public sentiment that called for the enactment of these laws was aroused in the main by philanthropic organizations of the well-to-do classes, and the statutes themselves were usually drafted with the aid of the best legal advice. But the trade-union men, through whose initiative most of the other labor laws were placed on the statute books, did not always have the benefit of such advice, and a great deal of that legislation has been crude and ineffective, and has broken down

when tested in the courts. Here, again, the eight-hour movement furnishes an excellent illustration. I suppose that there is no other aspiration to which the labor movement in this country has been so passionately attached as the eight-hour day, which means to the workingman not so much a diminution of drudgery as leisure for an ampler life at home. The movement started almost fifty years ago, for the first general workmen's congress held after the war declared the eight-hour day to be the first and greatest need of labor. It was in 1868 that Congress enacted a law providing that employees of the Federal government should work eight hours a day, and, though the act was several times amended and improved, it remained for President Roosevelt in the year 1906 to secure its observance, as was intended from the first, on all public works built by or for the United States government; and in our own State it required a constitutional amendment in 1905 to secure the same object. Throughout this period the shorter day has been treated as a plaything of politics upheld solely as a bid for the "labor vote" without any real comprehension of its significance. It is indeed difficult for the professional man to tolerate such a proposition as the enforced regulation of the hours during which adult citizens shall work. He himself may, and often does, work fifteen or sixteen hours at a stretch, and keep it up night after night, but in the end he has his vacation, and every day his time is his own to order according to his choice. But the wage-earner who is tied to the factory engine or the freight train has no such freedom of action,—he must keep pace with the machinery,—and an act of the legislature regulating his hours of work cannot therefore deprive him of a liberty that he no longer enjoys.

Even if the defenders of personal liberty recognize the impossibility of individual freedom for the workman employed in the large industry, they fall back on the proposition that the legislature should still keep its "hands off," and permit the Common Rule of industry to be the subject of collective agreements between the employers and the organized workmen. "Encourage the men to support the union and work out their own salvation." A few trades have succeeded in winning the eight-hour day by this method. Few mechanics in the building trades now work more than eight hours a day

and in the great cities they work only forty-four hours a week. But progress has been slow. The railway men, the very cream of trade unionism in this country, still work long hours, and they hail with satisfaction the legislation effected at Washington and the State capitals last winter, which sets limits to their hours of employment. The printers set out to secure the eight-hour day without legislative interference, but they did not receive much public sympathy, even when they had to strike to get it. The strike has lasted for nearly two years in some cities, and, while it has been fairly successful, has already cost the union upwards of three and one-half million dollars. For week after week the union printers paid assessments of one-tenth of their wages, and are still paying one or two per cent. a week. What other trade could stand such a sacrifice for principle? How can any one expect unskilled workmen, earning little more than a bare subsistence, to sacrifice such an amount of money, even supposing that their places could not be filled at once with labor imported from the superabundant marts of Europe? The astonishing performance of the union printers merely serves to demonstrate the ardent devotion felt by the more intelligent men of the labor world for the shorter day, not its practicability as an achievement through organization of the workers.* If they cannot themselves make their desires felt in the common rules established for the industry, it is to be expected that they will seek the sanction of public authority in establishing more equitable common rules.

Another obstacle in the way of progressive labor legislation in this country is the rivalry of the States in competitive industries. Believing, as we do, that efficient protection of its working people must ultimately enhance rather than handicap the productive capacity of a community, we see in this objection more of pretext than of reason. Nevertheless, the threat of the removal of important industries to more complaisant communities does have its effect upon law-makers, and we in New York and Massachusetts cannot expect to carry out a progressive policy until our more backward neighbors and competitors have closed some of the gaps between us. The

* The reader will perceive the assumption made throughout the argument that the shorter work day is practicable as an economic policy. The proposition that the reduction of working hours to eight per day will not in the long run perceptibly diminish the production of wealth is now conceded by the weight of economic opinion.

Massachusetts legislature has repeatedly petitioned its representatives in Congress to promote a Constitutional amendment authorizing Congress to regulate the hours of labor, and, as Secretary Root demonstrated in his masterly address, national intervention of some kind must inevitably come if the States fail to perform their duties. There has already developed a strong feeling in favor of the Beveridge bill for the restriction of child labor under the guise of a regulation of interstate commerce, and, if State inaction persists much longer, a large body of thoughtful citizens who distrust the stretching of that clause to cover all varieties of police regulation will accept it as the only alternative to industrial anarchy. We have already had a striking object-lesson as to the effectiveness of national regulation in the recent legislation on employers' liability, for at a single session Congress has given us a better statute than any State had enacted, and the President has officially recommended and repeatedly advocated in his addresses to the people an even more comprehensive law. He has committed himself to the principle now universally accepted abroad, but absolutely new in American law, that the employer of men engaged in hazardous trades should assume all the risks of the trade, and become, in fact, the insurer of his employees. Thus far our law holds him responsible only for his own negligence, leaving the vast majority of risks to be assumed by the employee, who may himself be at fault in very few cases. The inadequacy of negligence law as a remedy for industrial accidents was recognized in Continental Europe nearly a generation ago, and it is now ten years since England abandoned that principle in the Workmen's Compensation Act, which requires the employer to pay an employee injured while at work an allowance equal to one-half his regular wages. It is significant that at the very time the President was making his so-called radical recommendation the International Congress of Industrial Accidents and Insurance changed its name to the International Congress of Social Insurance in recognition of the virtual solution of the accident problem in Europe and the need of directing study to the problems of insurance against sickness, old age, and unemployment.

This organization, which is now in its eighteenth year, may have helped to pave the way for international action in the

broader field of protective labor legislation, which culminated in the organization at the Paris Exposition of 1900 of the International Association for Labor Legislation. Many earlier efforts had been made to secure concerted action on the part of European powers, whose industrial rivalry had retarded needed legislation in the same way as has the rivalry of our States at home. It is of peculiar interest to us that the leader in the earlier movements was a Swiss statesman who won his title of colonel by service in the Union army in the Civil War. We have but recently read in Carl Schurz's reminiscences of his acquaintance in the army with Colonel Emil Frey, who subsequently became minister to the United States from Switzerland and later president of the Swiss Republic. Colonel Frey suggested in 1876 that international conventions establish uniform conditions of labor in all industrial countries; but when, five years later, the National Council of Switzerland voted to begin negotiations with other countries, the responses were all unfavorable. Of the subsequent attempts to secure an international agreement the most memorable is that of the German emperor in 1890. Impressed with the need of State interference for the protection of the health of factory operatives and apprehensive of the progress being made by the Social Democratic party in winning the confidence of the wage-workers of Germany, William II. immediately upon his accession to the throne in 1888 devoted himself to a study of the labor problem. He reached the conclusion that Germany could not go far alone on the path of social reform, and thereupon called the International Conference on Labor that was held in Berlin in 1890. Propositions regarding the regulation of the hours of labor, the work of women and children, etc., were discussed by the delegates without leading to a binding agreement, but since then have been quite generally adopted.*

In 1897 the Swiss Council again opened negotiations with other governments, but without notable success, and in September of that year the Swiss Workingmen's Association took the initiative in calling a conference in Zürich, to which it invited

* See the Parliamentary Return of Aug. 3, 1905, showing the "terms of the . . . resolutions embodied in the final protocol of the International Conference on Labor in Factories and Mines held in Berlin in 1890 . . . and the degree to which the recommendations . . . are now carried out." Summarized in the Bulletin of the New York State Department of Labor, March, 1907, p. 64.

economists, government officials, and others. At this conference was developed the project of an international labor bureau of a semi-private character. The culmination of these and other efforts in the same direction was witnessed at the Paris Exposition of 1900, where, among the remarkable congresses on Social Economy, was one for the Legal Protection of Workingmen. At this congress was founded an International Association for Labor Legislation, with a permanent secretaryship and bureau in Switzerland. While the International Labor Bureau, opened in Basel May 1, 1901, is not a full-fledged government bureau like that of the International Postal Union and other international offices in Switzerland and Holland, it is supported in large part by government appropriations, in which the United States shares. The office aims to be an international bureau of information regarding labor legislation, and its activity lies in the collection and publication of such information. Since 1902 it has issued in the German and French languages a Bulletin containing current legislation, bills, resolutions of congresses, and a bibliography of labor literature, and numerous special reports, which have covered in particular the subjects of Dangerous Trades and the Night Work of Women. These reports were prepared under the instructions and for the use of the General Committee of the International Association, which meets in alternate years to discuss proposed legislation, and enabled the Committee, or Assembly of Delegates, as it might better be called, to agree to definite proposals in 1904, which were embodied in memorials to the various governments. The Swiss government then invited the other governments to send accredited representatives to a conference on the subject of the two memorials, and in September, 1906, international treaties were entered into by thirteen nations.* The way for such treaties had been paved by the Franco-Italian treaty of April 15, 1904, whereby Italy agreed to reduce the hours of labor in manufactories and to institute an effective system of factory inspection, while France renounced the unequal treaty of Italian workmen under the French system of accident insurance and assured better pro-

*A translation of the treaties appeared in the *New York Labor Bulletin* of December, 1906.

tection to Italian children in France. "The treaty," says Secretary Bauer, "was negotiated by two eminent members of our Association, Messrs. Fontaine and Luzzatti, and was the direct outcome of the work of the Association," the framers having begun negotiations at the Cologne meeting in 1902. As a result of the Association's activity, international labor treaties have already become of sufficient importance to call for a monograph by a French scholar ("*Droit International Ouvrier*," by B. Raynaud, professor of law in the University of Dijon.)

It would be tedious and perhaps unprofitable at this time to enter into further details concerning the work of the Association. It must suffice to say that the Association now has branches or sections in twelve countries. The English section was organized in 1905, and the American section in the following year, and their first efforts were directed toward the securing of funds for the publication of an English edition of the invaluable *Bulletin of the International Labor Office*. Both sections sent delegates to the General Assembly at Geneva last September, which voted a grant of \$800 a year toward the publication of the English *Bulletin*. This amount will not cover the cost of printing alone, but the English section undertook the work of translation, and in June and July of the present year the first *Bulletin*, containing one hundred and seventy-six closely printed pages, was ready for distribution.

The American section, designated as the American Association for Labor Legislation, is now ready to take up its own work, besides preparing reports, etc., for the biennial meeting of the International Association, which will next year consider the subjects of Child Labor, Night Work of Minors, Limitation of the Hours of Labor, Industrial Poisons (lead paints and colors), Administration of the Labor Laws, etc. The first annual meeting of the American Association will be held in Madison, Wis., next December, in conjunction with the American Economic Association and the American Political Science Association. Among the subjects to be discussed in open session are the Normal Working Day in Mines, Workmen's Insurance, and Working Conditions of Stokers on Transatlantic Steamers.

The objects of the Association, as stated in the Constitution, are:—

1. To serve as the American branch of the International Association for Labor Legislation.

2. To promote the uniformity of labor legislation in the United States.

3. To encourage the study of labor legislation.

The ground has already been prepared for its activity by the work of government labor bureaus and university seminars in the collection and publication of material. With the assistance of pecuniary grants from the Carnegie Institution, university students have already given us histories of labor or factory legislation in the important commonwealths of New York, Pennsylvania, Massachusetts, and Connecticut. At the same time the study of labor problems has reacted upon the minds of university students and teachers, and already produced a marked change in their attitude toward labor legislation, which may be observed in the newer textbooks on political economy. It would, indeed, be difficult to find a greater contrast than that between the former teaching at Harvard and Yale and the present teaching at two equally conservative institutions, Columbia and Johns Hopkins.

My own observation and experience as an officer of the New York Department of Labor have convinced me that the subject of labor legislation is interesting a growing body of citizens, which is being rapidly recruited from the ranks of young college graduates. Men are coming to realize the impropriety of calling labor laws class legislation and passing them over as of no general interest. On the contrary, they are realizing that it is vastly in the public interest to enact laws that will not only safeguard the health and morals of the people massed in large factories or employed in small sweat-shops, but also protect them from extortion and coercion, and secure to them some leisure in which to prepare themselves for the discharge of the duties of citizenship.

3. INTERNATIONAL SOCIALISM: ITS AIMS, METHODS, AND PROGRESS.

BY W. J. GHENT.

The International Socialist party aims to abolish the acknowledged social evils of to-day by transferring the means of production and distribution from private to social ownership.

Its methods in attaining this aim are to organize, educate, and discipline the class of wage-earning workers, the class which suffers most under the prevailing system, and which has most to hope for under the proposed system; to hold this disciplined body separate and apart from other bodies, and to prompt it to win by its own force, from the owning class, whatever immediate concessions it can without in any manner compromising its ultimate aim. It strives by all efforts in its power to increase its vote at the ballot-box, for it believes that by this increase the attainment of its goal is brought ever nearer, and also that the menace of this increasing vote induces the capitalist class to grant concessions in the hope of preventing further increases. It criticises non-socialist efforts at reform as barren of positive benefit and as tending, on the whole, to insure the dominance of the capitalist class and to continue the social evils now prevalent.

In this Social Science Association are, I presume, men of the widest diversity of belief. Many, no doubt, have no sympathy with the Socialist aim, but instead look upon the present system as one ordained of God or of Nature or of both, and therefore hope, by an indefinitely continued process of patching up its weak places, to maintain it to the end of man's dwelling on the planet.

With these men I have no controversy on this occasion. I take it, rather, that my business here to-day is to contrast the methods of the International Socialist party with the methods of those who, with a more or less definite sympathy with the Socialist aim, oppose its methods and think to advance their cause by any methods that at the moment occur to

them; that is, any methods except alliance with the Socialist party.

These men are what we call Opportunists. Of course, the word "Opportunist" is one of many meanings. But I shall use it here only in its more specific sense of one who accepts with more or less definiteness the Socialist aim, but who does not accept the Socialist method.

The obvious; the apparent argument is confessedly with opportunism. When you give coal to the fireless or medicine to the ill, you can of course see an immediate benefit. No one can doubt that charity relieves a multitude of hungry stomachs. The sympathetic interest, the kindly care, dispensed at some of the settlements is a helpful, and sometimes a lasting, benefit to the poor children of the tenements. Or, passing from benevolence to reform, one can see at least a possibility of benefits in laws ordering seats for shop-girls, reducing the hours of women in the factories, or in international agreements to promote labor legislation. One may even see, though doubtless more dimly, such possibility in laws aiming at the curtailment of graft, or the regulation of issues of stocks and bonds, or in the creation of a public utilities commission.

But there is, so Lester Ward tells us in his "Pure Sociology," an optical aberration known as the "illusion of the near." "If we magnify any object sufficiently," he writes, "it loses its character." To be seen rightly, it must be seen in relation to other things. These immediate and incidental benefits, seen too closely and seen also under the magnifying influence of a sense of our personal share in achieving them, may take on a size and importance wholly out of their reality.

For these things, even when real benefits, may be gained at a sacrifice of greater benefits. It is nothing at all of permanent social advantage to have a few hundred children welcomed and schooled at the settlements, if at the same time several hundred thousand children in the nation are added to the army of wage-earners. It is nothing to pass a few laws in behalf of the industrial workers, if every year the lot of the wage-earner becomes more wretched. A general safety appliance law is a delusive thing to boast of, if proof can be shown that the ratio of railway casualties increases year by

year. Nor is it anything to be able to chronicle a step here and a step there toward municipal ownership, if constantly the concentration of wealth becomes more accentuated. Every one, even the most extreme revolutionist, is able to see petty changes for the better now and then. But what is needed is a clear-sighted estimate of these benefits in their relation to social progress as a whole.

Now the Socialist policy is not to disdain concessions from the owning, or capitalist class, but to consider always the character of such concessions and the mode by which they are gained. The Socialist party never permits itself to forget that the working class may accept charity, or legislative or administrative gifts, at the sacrifice of its discipline, of its integrity, and in jeopardy of the attainment of its ultimate rights. A notable part of its function is perpetually to warn the working-class Esau not to sell his birthright for a bad meal.

In legislative bodies its representatives always vote for those measures believed by them to be of advantage to the working class. But they concern themselves very little with those trumpery measures which in increasing number are introduced in our legislatures, and sometimes in our reform conventions,—measures which reveal the dying struggles of the so-called "middle class," and its desperate clutching at anything which may keep it for another moment above water. The rank and file of the Socialist party, however, take upon themselves the obligation not to vote for the men or measures of any other party. Of course, this policy has been denounced by non-Socialists. But even the most republican army of which any one can conceive would hardly permit the relaxation of its discipline to the point where the soldiers in the ranks could dicker with the enemy. And it is as members of a social army that the units of the Socialist party regard themselves. A ministerial function, hedged in and sharply bounded by democratic authority, is given to its legislative representatives, but the ranks themselves maintain a disciplined unity. The rank and file, then, sanction in their representatives the voting for beneficial measures, but they keep these legates ever charged with the duty of not forgetting the ultimate aim.

It is the fashion just now—more, perhaps, than at any other time—to ridicule, or try to ridicule, so-called extreme views, and to lay stress upon so-called practical action—action that proceeds step by step. Separated some decades from the time and having no personal interests at stake, we can now all of us honor and extol the extremists of the American Revolution, and in a somewhat lesser degree, because nearer in point of time, the extremists of the Abolition movement. But the men who, in our own time, are carrying these former revolutions to their inescapable conclusions we must all join in denouncing, because they are troubling our complacency, they are jarring us from the trance of every-day life, and they are disturbing interests with which we are more or less directly concerned. From the great President—the unmatched adviser and censor of his people's morals—down through an uncatalogued list of professors, ministers, and politicians to the end, arises this chorus of exhortation to be practical; to shun the misguided, the unbalanced, the visionary Socialist, and to get things done. But no real Socialist is ever in the least perplexed by this cry. He knows it for what it is—an inevitable reaction from the splendid growth of the Socialist movement.

"We Socialists," said Bebel once, "have no dogmas. We are a party of learners." If any doctrine or contention of ours can be shown to be unfounded, we are eager to have proof. Just now we are clamorous for an itemized account regarding the general and enduring benefits of the step-at-a-time policy. The supporters of a policy alleged to be so practical ought to be able to show a ledger with many and important entries on the credit side, and few and less weighty entries on the debit side. We want it shown to us that by reason of some ten or twenty years of grave discussions by social science conventions, by reason of the activity of city clubs, of reform associations, of non-partisan citizens' movements, of committees of one sort and another formed for the purpose of obtaining some immediate good, any general enduring good has been gained. We want it shown that by the operation of these methods wealth has been more equitably distributed, the lot of the industrial worker has been bettered; the number of industrial casualties has been diminished; pauperism,

insanity, and crime have been sensibly lessened; political and commercial graft has been curtailed; the equality of rich and poor before the law has been advanced; employment has been made more secure; general opportunities have been extended, or, in a word, any general progress worthy of the name toward a more ideal state of society has been achieved.

It is with almost jaunty confidence that we Socialists challenge the production of such a ledger. Many Opportunists may no doubt have bettered their own condition in ten or twenty years, and now, seeing life through the roseate colors of happier surroundings, may easily translate their own progress into that of the world in general, causing them to dower the most wretched of their fellows with imagined blessings. But something more than the personal equation applied to guesswork is demanded in this place.

This is a specific demand, with a definite time period. It would be idle to deny that in decades or centuries some sorts of progress have been made. Society is always in a state of instability, and is ever seeking, consciously or unconsciously, to adjust itself to the changing mode of producing and distributing goods,—to the economic process upon which it is founded. These adjustments, however, we make bold to say, are things with which you Opportunists have little to do. In the earlier period of an economic system they are generally spontaneous and unconscious, and in the later period they are conscious, being the result of the growing power of an advancing class. They are adjustments with which you Opportunists have about as much to do as had the proverbial fly in raising the cloud of dust about the chariot wheel.

You must show, then, not merely that by your methods you have caused to be done this thing or that, but that the thing done was worth the doing—that it has made some observable betterment of social conditions. We have a period in the history of this country wherein such a test can fairly be applied. The Henry George uprising occurred in the summer and fall of 1886. It marked the beginning of a crusade of opportunist endeavor. In the twenty-one years following that time we have had every imaginable sort of effort at correcting evils. We have had I do not know how many conventions of economists and publicists, we have instituted

labor bureaus, passed innumerable labor and railroad laws in the States, while the nation has given us among other things an anti-trust law, a contract-labor law, an interstate commerce law, and a safety-appliance law. We have more than doubled the number of our benevolent institutions, we have enormously increased our charities, we have transformed many of our colleges and universities from cottages into palaces, we have laid out parks and playgrounds, and we have dotted the cities with settlements. Surely, after so much practical endeavor, after so great achievement, the social state of the country should be well-nigh ideal. There should be little poverty, no luxury, little crime. There should be peace and plenty, just administration of law, honesty alike in public and private service, and each man should be able to sit unafraid in the shadow of his vine and fig-tree, and, as he remembers with scorn the wild denunciations and the visionary proposals of the foolish Socialists, contemplate with rapture the blessings gained for him by practical, step-at-a-time effort.

Well, then, let us see what are some of these wonderful social gains in the last ten or twenty years. We have in this country, according to Mr. Robert Hunter, ten million persons in a more or less constant state of poverty. I am aware that this estimate has been assailed by more than one eager apologist for the present order, but I am unaware that it has been seriously discredited by any one. For my part, I believe it a conservative estimate. What the numbers were ten or twenty years ago no man can say. I choose to believe there has been an increase relative to the population, and certain data which will be given further along will, I believe, tend to confirm this view.

We are paying, as a nation, on the authority of Professor Charles J. Bushnell, \$6,000,000,000 annually for our charities and corrections. These figures are, I confess, somewhat appalling, and I do not know just how they are to be confirmed by data now available. But Professor Bushnell, in a sharp reply to his critics, reiterates them, and indicates sources from which, he maintains, they can be sustained. If they are correct, they show a constant and growing deficit in our accounts as a nation. For in the four years 1900-04, at least

the latter part of this period having been graced with a truly wonderful degree of so-called "prosperity," the national wealth increased, according to the census, at the rate of only \$4,646,000,000 yearly. We should thus be gaining four and three-quarter billions yearly, and paying it all, and a billion and a quarter besides, to square the account with the victims.

Anyway, we are gaining now at the rate of four and three-quarter billions a year. From 1880 to 1900 our wealth increased from forty-three to eighty-eight billions. But who got it? Is wealth any more widely distributed to-day than it was twenty-five years ago? There are a number of prosperous persons, and others who through their subservience hope to be prosperous, who say so. But it is doubtful if any considerable number of the unprosperous take them seriously. There are the savings-bank statistics, of course—the first and last refuge of the optimistic statistician. It is almost needless to say, however, that in this day no one whose judgment counts for much accepts savings-bank figures as an index of working-class conditions. And there is nothing else except the temporary greater regularity of employment that can be even juggled into indicating increased prosperity among the wage-workers.

Unfortunately, we have had very little work on the distribution of wealth in 1880. But with 1890 we have the computations of Mr. Lucien Sanial, Mr. George K. Holmes, and Dr. Charles B. Spahr. Mr. Thomas G. Shearman's computation was made in 1889, but it differs in only minor particulars from Mr. Sanial's. All of these estimates are in fairly close agreement—a remarkable fact, considering the different methods by which they were reached. They show, averaging them, that not less than 51 per cent. of the nation's wealth was owned by not more than 1 per cent. of the people.

But by 1900 this concentration had become greatly accentuated. Mr. Sanial's estimate for that year puts the plutocratic class at nine-tenths of 1 per cent. of the numbers engaged in gainful occupations, and gives it 70.5 per cent. of the total wealth. But the plutocratic class as a whole contains many persons of wealth who are not engaged in gainful occupations; and an estimate for this additional wealth brings the aggregate for 1900 to 75 per cent. of the total. To-day we

have to account for seven more years of this uninterrupted movement of concentration, in a time of great wealth production. We shall not go far astray in accepting Mr. Henry Laurens Call's estimate of an addition to the wealth of this 1 per cent. of the population which brings its present possessions to 90 per cent. of the total.

The workers, as a class, got little, if any part, of this increase. The nominal wages of the skilled workers are higher, the actual wages of all workers, skilled and unskilled, are lower than they were in 1890, probably lower on the whole than they were in 1886. No one will accuse the statisticians of the Labor Bureau of an undue pessimism. But the best they can do in the *Bulletin* for July, 1906, is to show an average weekly wage in 1905 of 12.9 per cent. above that of 1890 and of 14 per cent. above the average for the ten years 1890-99. This, mark you, is for the manufacturing industries, including the most skilled and the best-organized workers. No one supposes the common laborers, clerks, and the like to have made any such gain. It is a matter of common observance that the wages of clerks are rather less than more than they were twenty years ago. The same thing is true of salesmen in stores, and is probably true of common laborers. In 1898, according to Colonel Carroll D. Wright's figures, the wages of common laborers were less in six of the ten cities quoted than they were in 1882, while in four cities the rates were unchanged. There is no evidence of a rise in their wages since that time.

But small as is this increase of wages, and restricted as it is to but a part of the working class, there is a considerable deduction to be made from it. The *Labor Bulletin* for March of this year gives the average wholesale price of 258 commodities for 1906 as 36.5 per cent. higher than in 1897, and 22.4 per cent. higher than for the ten-year average 1890-99. The *Bulletin* for July, 1906, computes the rise in the retail price of food, weighted according to family consumption, at 12.4 per cent., just about equalling the wage increase.

But the increase in food prices is only a small part of what the worker has been called upon to pay. Dun's index figure for 1886 is 89, for 1890 it is 91.5; and, though this number fell to 72 in 1897, it has since been rising irregularly, having reached 105 last year. This does not, of course, include rents, which

have risen enormously, and certain other necessities. Paying from 25 to 40 per cent. more for living necessities out of a partially distributed increase of from 12 to 14 per cent. in wages hardly accords with the theory of increased distribution of wealth among the workers. There has been no such increased distribution. There has been, instead, increased concentration.

The census figures on paupers in almshouses show an absolute increase of 15,561 in twenty years. This number is, however, a marked decrease relative to population. But, as the census bulletin remarks, the figures indicate very little regarding the extent of privation. The better classification of dependents, which now distributes many of them to institutions other than almshouses; the differing provisions regarding paupers in the various States; and the general effect of private charity, which saves a great many paupers from institutions,—are factors which make comparisons of these figures futile. We do not doubt that pauperism increases relative to population, but we cannot prove it by the figures of paupers in almshouses alone.

We cannot find time here to consider some other figures—those, for instance, on farm mortgages, farm tenantry, and proletarian unemployment. Of course, the movement of farm mortgages, like that of paupers in almshouses, is not a final indication of anything. It may be conceded, too, that the frightful showing of unemployment in the 1900 census has been corrected to some extent by increased employment since then. It is not so easy to concede the contention made by Dr. Henry C. Taylor, in his work on "Agricultural Economics," that the increase of farm tenantry is rather an indication of prosperity than the reverse. But to consider all these figures adequately is not possible here. It is sufficient for the moment to point out that, on the showing of data about which there is less dispute, none of all the practical things done by all these very practical opportunists these last twenty years has perceptibly impeded the tide of wealth concentration or has lightened in the slightest degree the general lot of the poor.

Well, there are the railroads. No problem of to-day has been so constantly a subject of discussion, of private proposals, and of legislative enactments. Twenty years ago the Interstate Commerce Commission was established, and since that

time the subject of railroads has been almost uninterruptedly before every legislature, every Congress, and every social and economic convention. One of the main objects always aimed at was the abolition of discriminating rates against the little fellows. And what has been the result? The report of the United States Industrial Commission (1901) declares, "There is a general consensus of opinion among practically all witnesses, including members of the Interstate Commission, representatives of shippers, and railway officers, that the railroads still make discriminations between individuals, and perhaps to as great an extent as before."

And again: "It is thought generally that there has been a considerable improvement in the situation during 1899. . . . Many witnesses, however, including representatives of the railroads, think that the improvement is only temporary, and, that when the present rush of traffic has ceased, discriminating rates will be granted more and more."

Professor Frank Parsons, in his "The Heart of the Railway Problem" (1906), comments upon this declaration as follows: "The investigations of the last five years show that these witnesses were right in thinking the cessation of hostilities to be only a temporary truce."

Professor Parsons is particularly scornful of the visionary methods of the Socialists. Only in this instance, as in some others I shall make, the practical efforts of himself and his fellows seem to have met with other results than those so confidently predicted. The Interstate Commerce Report for 1905 is still complaining about violations of the law, declaring that rebates are unquestionably paid and that unjust preferences are given by other methods.

Is the railroad situation more satisfactory in its other phases? Is the manipulation of railroad properties less easy or less frequently resorted to? Is the watering of stocks to the saturation point less common? Have the abuses of the private car graft been curtailed? We want an answer.

"The situation has become intolerable," says the Interstate Commerce Report for 1898, and goes on to point out why it has become so. And Professor B. H. Meyer, in his "Railway Legislation in the United States" (1903), lays down what he calls an "incontrovertible proposition" in these words:

"The present situation with respect to railway affairs in the United States is untenable and indefensible." Wise words, especially when one reflects that their author is another of those exceedingly practical men who want to do one thing at a time.

How is it with railroad casualties? The interstate roads reported for the year ended June 30, 1905, 9,703 persons killed and 86,008 injured. This is not their highest record, but it will do for comparison. This casualty list, it should be noted, is greater in the number killed than that suffered by both contending armies at both the bloody battles of Fredericksburg and Gettysburg, and greater in the number wounded than that suffered by both armies at Antietam, Fredericksburg, Stone's River, Chancellorsville, and Gettysburg combined.

For the sixteen-year period from 1890 to 1905 the railroads show a record, in relation to their employees, something akin to that of modern warfare, which with its clean, hard bullets and aseptic surgery diminishes killing at the expense of wounding. In 1890 they killed one in 306, two years ago they killed one in 411. But seventeen years ago they wounded only one in 33, while two years ago they wounded one in 21. This ratio, be it noted, does not apply to passengers, who are both wounded and killed more intensively than seventeen years ago, nor also, be it noted, does it apply to either employees or passengers since the mid-nineties. From that time the ratio of killings and woundings to the number of persons employed or carried has grown almost steadily.

The passengers who travelled in 1895 could foot up 213,651 miles before one of them was wounded, while two years ago they could make only 70,655 miles. In 1895 they could count 71,696,743 miles before one was killed, while two years ago one of them was pitched into eternity for every 44,320,576 miles. Twelve years ago an employee was killed for each 433 employed, two years ago one for each 411. In the earlier year one was wounded for each 31 employed, in the later year one for each 21. Or take the employees known specifically as trainmen. The safety appliance act was passed for their benefit, and in 1905 it had been to some degree in operation for twelve years. Yet in the earlier year one was

killed for each 155 as against one for each 133 in 1905, and one wounded for each 11 in the earlier year as against one for each 9 two years ago.

It would thus not appear that any of your multifarious efforts had perceptibly lessened the number of railroad casualties. How is it, then, with general industrial casualties? Unfortunately, we have here few reliable figures for comparison. We are beginning to learn something about the number of casualties to-day, but our comparison with the past decade or two is largely confined to guesswork. We have the undeniable record of increased killing and maiming on the railroads, we have the record of 2,159 killings in the coal mines in 1905 as against only 1,467 in 1901, and here and there we get a glimpse of some definite basis of comparison. But the increase of general industrial casualties is hardly an arguable point, since no one regardful of his reputation would dispute it. Only it is a pity that we cannot get authoritative figures. We know, however, that to-day we are destroying lives at a rate about the same as that maintained during the Civil War. The computation of Mr. Frederick L. Hoffman, the statistician of the Prudential Life Insurance Company, estimates a fatal accident rate in the United States of from 80 to 85 in 100,000. On a basis of 82,000,000 population, this would mean from 65,600 to 69,700 killings. The serious woundings he puts at 1,600,000. But the fatal accident rate for the entire registration area as given in the census is 90.3. This would mean 74,046 killings yearly. Admitting that not more than 85 per cent. of these should come under the head of industrial accidents proper, we should still have a yearly total of 62,139. The Civil War did but little, if any, worse than this in actual killings and mortal woundings, while in maimings and in disablements through disease it furnished a record that is paltry in comparison with that made by our present industrial system.

I am afraid we shall have to look elsewhere for evidence of the solid progress made toward more ideal social conditions by following the practical policy of one step at a time. Where else shall we look?

Something has indubitably been done in reducing the death-rate. This is a doubtful gain if social conditions are to remain as they are. For no philosopher who includes happiness in

his list of goods desirable for humanity can deem it well that a child should be rescued from death in order to drag its wretched being through the hell of industrial life, as we know it to-day. Yet let us take this thing as a gain, and see what it is. As Dr. John Shaw Billings points out, the improvement is almost wholly due to the better nourishing of children and the better treatment of their diseases. The reduction is marked in tuberculosis, of course; and persons of all ages have tuberculosis. But the losses from pneumonia, cancer, heart disease, apoplexy, and other diseases of adulthood and senescence are generally greater. It is a virtual consensus among life insurance actuaries that in fifty years there has been no prolongation of adult life. In other words, all the benefits of science, all the benefits of an increasing observance of common sense in physical conduct—the application of India rubber to clothing, the improvement of food, the bettering of ventilation, the greater addiction to life in the open air—all these changes, and others besides, have been counterbalanced by the increased strain and danger of modern competitive life.

This fiercer battle certainly increases the number of the insane. Much has been done for these unfortunates: better treatment is accorded them, and an increasing number of hospitals is built for their accommodation. But the number of the insane increases at a frightful rate. We had 40,942 insane in 1880, we had 74,028 in 1890, 150,151 in 1900. The total insane in and out of hospitals was 170 per 100,000 in 1890; the total in hospitals only, 186.2 per 100,000 in 1900. In fifty years the increase has been 300 per cent.

There has been some progress in reducing illiteracy. But this, too, is a questionable good, if other social conditions are to remain as they are. It cannot be any advantage, in any tolerable scheme of things, to educate a child only to make it more conscious of its inescapable misery. But, even assuming education to be a good in all times and under all circumstances, the figures are hardly encouraging. Their clearest indication is that illiteracy is decreasing most largely through the dying off of the negro slaves, who were rarely permitted to learn to read, and that in their place is an increasing number of negro children who can barely read.

It is true there has been in twenty years a marked reduction relative to population in native white illiterates. Yet in ten years illiteracy has increased relative to population in the large cities of New York, New Jersey, Connecticut, Rhode Island, and Oregon, and in the small cities and country districts of Arizona, Connecticut, Montana, Nevada, South Dakota, Oklahoma, and Wyoming. There are still 6,180,869 persons at least ten years of age who are illiterate,—a number only 59,889 less than that of twenty years ago. But the real figures are missing from the census tables—the figures which would show the extent and degree of education. Those who have investigated the matter of the ages at which children leave the public schools know that there is a relative loss in the amount of schooling given to the children of the working class.

The figures of the average daily membership in the Chicago schools for the year 1902-03 show 44,623 pupils for the first year. Every year there is a drop of about 5,000, only 10,928 being found in the eighth year. And how many do you suppose are found in the twelfth year—that is, the fourth year of the high school? A poor remnant of 1,306. Making all allowances for the smaller number of children in the first grade twelve years earlier, there would still be a falling away of about 95 per cent. These children who dropped out did not die. The mortality rates for children from six to seventeen show that death could not have claimed more than 4,500 of them. They dropped out to go to work. The figures of other cities, in so far as they can be gathered, show the same conditions. In 1903-04, in 46 cities, there were 196,506 children in the first grade, there were but 8,232 in the twelfth. The figures are eloquent with meaning as to the progress of education.

Under the stress of the prevailing struggle the children of the workers are forced out of the schools to become wage-earners. Child labor becomes a greater and greater menace. Here is another field wherein a thousand activities have engaged to correct a great evil. National, State, and local committees have been formed, funds have been raised, appeals to the Christian spirit of the public have been made, and an onlooker would be led to think that the employment of children would speedily be terminated. But in 1880 the 1,118,356 child workers formed 16.8 per cent. of the child population,

while in 1900 the 1,750,178 workers formed 18.2 per cent. of the child population. The 1905 census of manufactures shows a slight decrease in the number of child workers, it is true. But manufactures proper include but a very small part of the fields wherein children are employed. And the reduction here, in all likelihood, is for a cause analogous to that which brought about the decline of chattel slavery in the Northern States,—the decreasing profitability in certain occupations of child labor.

The number of women in industry also increases. The increase since 1880 has been 2,479,642, or 105.3 per cent. Women workers formed 16 per cent. of the total female population above sixteen years of age in 1880; in 1900, 20.6 per cent. It is notable that the largest share of the increase in the last decade from the standpoint of race and nativity was in the class of native white women of native parentage. These increased in number 514,542, or 39.3 per cent. Married women in industry increased by 260,800, or 50.4 per cent.; widows, by 227,665, or 36.1 per cent. These figures mean, of course, an increasing disintegration of family life. It cannot be said, either, that on the whole the lot of women in industry has been lightened. There has been considerable factory legislation and some legislation aimed at the department stores. But the factory legislation has been largely futile, and the refusal of the courts to protect women in the matter of hours of work has increased their burdens. Moreover, no one at all conversant with the department stores in New York City, for instance, will dare to assert that since the passage of the Andrews bill in 1895 the treatment accorded women employees has as a whole improved. The difficulty of organizing industrial women makes possible the heaping upon them of a thousand abuses; and nothing that you reformers have done or can do in the matter is likely to better their condition. I am not ignorant of the existence of an organization known as the Consumers' League. But I tell you, try, if you will, the task of organizing a campaign in behalf of women employees in department stores. Right at the start you will find yourselves obstructed by the absolute refusal of every metropolitan newspaper to mention, under any circumstances, anything in the remotest way tending to

discredit the department stores; and if, in spite of this obstacle, you attempt to proceed, you will find yourselves obstructed along a hundred paths by powers commercial, legal, juridical, social, and possibly even ecclesiastical.

If general social conditions have improved under the cumulative effects of your earnest efforts these last twenty years, there should be less need for benevolent institutions. Yet in the thirteen years 1890-93, 2,004 of these were founded,—an increase of very nearly 100 per cent. It can hardly be contended that they were founded and have been maintained solely to give employment to mechanics and attendants; and the only other cause for this increase that occurs to me is that it reflects what you consider to be a rapidly growing social need.

Then, too, if you practical men have added anything in the last twenty years to the joys of living, the 8,000 or 9,000 persons who will destroy themselves during the coming year would doubtless be glad to hear of it. And, if you have added anything to the security of human life from deliberate attack, the news will be exceedingly welcome to the 8,000 or 9,000 persons destined to be murdered within the next 365 days. According to the careful figures of the *Chicago Tribune* the number of suicides increased from 1885 to 1903 more than five times as fast as the population. The yearly average for the three years 1881-83 was 688; for the three years 1901-03, 8,194, or twelve times as great. Murders and homicides have also increased at a frightful rate. The mean for the three years 1881-83 was 1,477; for the three years 1901-03, 8,554. Some of this increase may be apparent only, due in some degree to the less efficient news service of the *Tribune* twenty-five years ago. But the increase from a later time, say 1890, is, with the exception of four abnormal years, 1894-97, rapid and fairly regular.

The computable benefits of your policy are hardly observable here. Where, then, must we look for evidence? Frankly, I am at a loss to say. You have instituted the initiative and referendum in a number of places, but the results in improved legislation and in the elimination of graft have not been established. You have passed some inheritance laws, but their effect on the poverty of the mass and on the concentration

of wealth eludes the sharpest eyes. You have passed a national contract labor law, and it is violated all the time. The successive irrigation measures have doubtless been more fruitful of observable benefits to a part of the people and a part of the country than any other work that has been done. But, whatever local blessings have come from them, it remains to be proved that they have had the slightest degree of influence on the general state of social conditions. In one work alone, in so far as I can judge—in the passage of a pure food law—has any general social benefit been gained. We are not so elaborately poisoned to-day as we were a year ago. But a pure food law is one of those fundamental necessities which come, like manhood suffrage and popular education, because they cannot be withheld. The poisoning of food and drink is an evil from which all suffer—workers, retainers, “middle class,” and to some extent magnate class. The struggle for a pure food law does not involve a contest solely between working class and capitalist class; and the enactment of such a law has therefore been possible. No one supposes this law to be as rigorous or as comprehensive as it should be, and no one supposes that it will be enforced as it should be. But the law itself may be conceded to be a positive social gain. Is its passage, however, anything for the self-congratulation of you opportunist reformers? Certainly not. The law came through a general and almost spontaneous demand from all quarters and all classes. So far as I recall, no person of the least prominence in the reform world took any part in the campaign. With eyes fixed afar on government ownership, initiative and referendum, utilities boards, rate regulation, and other Utopian dreams, they succeeded, with their notable perspicacity, in keeping themselves wholly apart from the only recent measure which has exerted the slightest general benefit.

In his recent work on “Pragmatism,” Professor William James quotes with approval a passage from Mr. Gilbert K. Chesterton, as follows: “There are some people—and I am one of them—who think that the most practical and important thing about a man is still his view of the universe.”

And Professor James adds, addressing one of his audiences: “You each have a philosophy. . . . The most interesting and

important thing about you is the way in which it determines the perspective in your several worlds."

Narrowing this dictum to the specific domain of social organization, we, too, say, "The most important thing about you is your philosophy of history—your interpretation of social phenomena, past and present." You may have a purely idealistic philosophy—you may think that social changes are the result of notions got from heaven knows where of what should and what should not be. You may have the great-man theory, that social changes are the result of the interposition of wise or forceful men in the affairs of people and nations; and you may, in the midst of your very practical efforts, lay the flattering unction to your souls that you are yourselves among the great and wise. You may have any one of a half-dozen such interpretations, and whatever one you cling to will of course affect your attitude and your conduct with regard to social changes.

But we tell you that one social philosophy alone will explain the riddles of history. The solution of the problems of physical science accords no more closely with the hypothesis of evolution than does the solution of social problems accord with this hypothesis. It is the economic interpretation of history, with its inescapable corollary of the class struggle. The utter futility of your efforts these many years is explained by this philosophy, and it is explained by no other.

Year after year you devote your labors to one after another of many specific aims. But you are able to show no visible results of your toil. Thwarted in one endeavor, you as eagerly turn to another. But always and everywhere the results for you are the same. You succeed in no single particular in adding a single good to the general mass of mankind.

And why are your efforts so uniformly barren of achievement? They are futile because you refuse to recognize the terms and conditions of the social struggle. The struggle fundamentally is not one against individuals, no matter how monopolistic or how evil they may be. It is not fundamentally a struggle to terminate this or that privilege or power which certain individuals or groups have seized. It is a struggle against a class as the representative and chief support of a

brutal economic system, and its meaning is the abolition of that system. The nature of the struggle is for the time somewhat obscured by the desperate protest of the so-called "middle class" against extinction. But the real, the underlying factors of that struggle are the awakening aggression of the working class against private ownership, the movement of economic processes to an intolerable culmination, and the stubborn determination of the ruling class to yield no point. The chimeras which you insist upon fighting, and which you name variously, each man after his wont, as Monopoly or Special Privilege or Discrimination, are merely the projected shadows of this great power, the ruling class. It is a class fortified in material possessions, in law, in administration, in ecclesiastical and educational institutions, and yet more in the awe and the terror which it inspires and the subservience which it compels in ministers, educators, and politicians, as well as in the common mass. It cannot be successfully combated by guerilla attacks waged against shadows. From its well-nigh impregnable fortifications it laughs at your desultory warfare.

A Socialist vote of 1,000,000 at the next national election would jar it to its inmost recesses, and cause it to offer a hundred concessions of one sort or another. But nothing that there is the remotest likelihood of being said or done in such a convention as this could possibly create the slightest flutter of excitement in the weakest outpost of this power. To what it has it holds on with an iron grip, and it means never to let go. Nor can you in any possible way by your present methods lessen that brutal hold. The capitalist class can be successfully combated only by another class overmatching it in numbers, in unity, and in determination.

When we say this capitalist class can be overthrown only by another class, we mean a class opposed to it in instincts, in interests, and in aims. The poor, demoralized, and disintegrating faction popularly known as the "middle class," which is now in frantic rebellion against its more successful partners, cannot do it. It has not the numbers, it has not the material power, it has not the fundamental opposition of interests. This class is suffering a constantly narrowing scope of action and decrease of revenue. It blindly protests against

the increasing dominance of the big capitalists, and it wants instituted a measure of restriction upon wealth-getting which will give it a better chance to compete.

But the members of this class, however they may oppose trusts and corporations, are a unit on the preservation of the reigning order. They have an equal appetite to that of the magnates for rent, interest, and profits, and in opposing the magnates they reveal only a desire for a larger share of the common loot. In defence of the existing system the petty trader will shed his heart's blood, or in extremity even his money, as freely as will the greatest of magnates. He will consent gradually to municipal ownership, and even to national ownership, only as he becomes firmly convinced that any share in the private ownership of utilities is impossible to himself and his fellows. But all the other avenues of exacting rent, interest, and profit, he wants left open, that he may batten upon them at will. The reform for which he clamors is the putting of a handicap on the man who plays his own game more successfully than can he.

The source of virtually all opportunist measures is this "middle class," or the individuals or groups hanging upon its flanks and accepting its ethical standards. Every such measure is doomed to failure, just as the class itself is doomed to extinction. The inexorable processes now at work, which in spite of unceasing clamor and of heroic exertions have lodged virtually the whole wealth of the nation in the hands of a class numbering with its families less than a million persons, will go on to their culmination of complete absorption of wealth, unless checked by the working class fighting under the banner of Socialism. Those processes cannot be stayed, they cannot be broken down, by your desultory attacks upon so-called "lines of least resistance." There are no points of least resistance in the fortifications of this class, and what seem so are merely the ambushes or quicksands into which you are lured and wherein your efforts are swallowed up and lost. There are no short cuts, there is no royal road to the goal. The Socialist way is the long way, but it is the only way. And, in perpetually seeking by-paths to victory instead of taking your place in the ranks, you are but repeating the actions of those unprosperous adventurers of the early days on this

Continent who sought the North-west Passage in every creek and inlet or who loaded their vessels with iron pyrites for gold when they should have been aiding in the work of building up the colonies.

This giant power, the capitalist class, has its ramifications everywhere. At some time, at some place, in your efforts, you come squarely against it in one form or another, and you cannot make a further move. You are checkmated, and you wonder why. It is because this power, sure of itself and unapprehensive of harm from you, is determined to concede to you nothing that is of value to itself. What it concedes, examine, and you will find it a Greek gift. You think you have won a victory when you have succeeded in passing some trifling measure of restriction. But a year or five years later, and you find that the very evils you had supposed corrected have continued unchecked. The measures of reform which you sometimes enact it immediately turns to its own advantage. Or, when in those rare cases, by the kindly interposition of Providence, some measure of yours is permitted actually to stop a certain form of exaction, you find that new and greater exactions have broken out in a score of other places. This power is greater than legislatures or courts, greater than even the most strenuous of executives. It is insatiate in its desire, and it has no fear of anything in heaven or on earth but the Socialist movement.

The class destined to overthrow this capitalist class is already on the field, and is slowly forming itself into militant array. We Socialists are its vanguard and its drill-masters, and carefully, earnestly, but, alas! not always patiently, we are bringing it forward and whipping it into shape for its appointed work. Unfortunately, it is cursed with ignorance, timidity, and moral inertia. It is unsophisticated, and is susceptible alike to the wiles of cajolery and to the panic of fear. Its instincts are just, but it is as yet too timorous to trust fully the validity of its instincts. It still mistakes benevolence for justice. It still looks to its smooth-spoken enemies and to its faint-hearted friends for advice. Its mood alternates between credulity and suspicion, for it is attracted by false lights and it is always betrayed.

But this class, for all its present defects, has vast latent

powers of reformation and upbuilding. It learns by experience, a thing no ruling class ever does; and its experiences in this day of capitalist supremacy are of a sort which tend ever to give it a better understanding of its environment, a closer unity, a greater determination, and a higher ideal of its mission. From every repulse it returns upon itself, gaining new strength and a riper knowledge. Year by year it sees more clearly the futility of its earlier modes of warfare and comes more generally to accept the tactics of its Socialist vanguard. There are momentary reactions from this tendency here and there, but the whole movement of the working class throughout the civilized world is increasingly toward Socialism.

It is now time that you men of earnest purposes and of great energies, who have yet spent your lives in endeavors barren of result, should recognize these truths. You may find it pleasanter to dwell in the palace of illusions, and to think that efforts such as yours must be efficacious, no matter what the unalterable records say. But, if you are willing to face the facts, and willing also to place yourselves where your efforts will count for most; if you are willing to renounce the praise of capitalist retainers that you, as opposed to the visionary Socialists, are "safe, sane, and conservative," then you will forswear your past affiliations, and enlist with this great international movement, the arbiter of the future.

GENERAL DISCUSSION.

[Thursday Morning, September 12.]

MR. JOHN MARTIN (the Chairman).—I am sure that, especially in that last paper, there is much to challenge criticism and debate, and the meeting is now open quite freely for such criticism.

DR. RUSSELL.—Mr. Chairman, I want to give a notice first, and that is to this effect, that a telegram from Hon. Martin W. Littleton informs us that he will not be here until to-morrow, but he will be here at this place to-morrow at this time and deliver his speech. Mr. Frank Hendrick, a distinguished member of the New York bar and author of learned works, is to take his place this evening, and will be followed by Judge Wheeler.

If I may be allowed, Mr. Chairman, while I am on my feet, I will say that we of the bar distinguish law from the output of the pulpit and of academic men, writers like Mr. Ghent, Mr. Martin, and others,—in this way, that law is what the people has decided to enforce with the last

ounce of public authority. Law is not advice given gratuitously to somebody else, but it is the resolution of organized society as to what is right and what the people mean to enforce. Now one aspect of this discussion will be brought up to-night. The topic of Judge Wheeler's paper is not announced on our programme, but it is this, "Progressive Inheritance Taxation," and he may be expected to examine thoroughly the arguments and principles underlying this great proposition, and I hope you will come and hear how this matter looks to a lawyer and to a great judge.

I am one of these opportunists, according to Mr. Ghent's definition. I believe every single thing I heard from my friend Dr. Weber. I call him my friend, because I have known him for an hour. [Laughter.] I think the hope of the world is along the line of step-by-step progress in doing something for the poor shop-girls, of whom the doctor spoke, down in these department stores. I hope the time will come when something will be done for lawyers. I wish somebody would reduce my hours of toil to eight, for I have to work Sundays and holidays and on other occasions when people generally are resting or engaging in revelry of one kind and another. Why it doesn't apply to me I don't know, any more than I can understand why the Knights of Labor classify us lawyers with saloon-keepers as the only ones that are not admitted to the mysterious brotherhood of their fellowship. As to Mr. Ghent's observations, I listened with a great deal of interest to his eloquent discourse, or oration, perhaps. In parts of it, it seems to have a semi-Olympian note and the tone of the best eloquence, but I never heard a single statement that I accepted unchallenged. I saw no argument that convinced me as correct in method, and I heard no conclusion that I could myself accept. But my attitude is that of a pupil toward Socialism. None the less, I thank him, as a member of this body and as an officer of this Association, for his contribution to our thought this morning, and I hope that somebody else who is really qualified will give you some discussion that is more worthy of your attention.

REV. O. P. GIFFORD, D.D., of Buffalo.—Mr. Chairman, the general theme for discussion this morning, I see by the printed programme, is "Is Socialism a Threatening Calamity?" It is certainly "threatening." Whether it is a "calamity" or not is another question. It is inevitable. Whether it is a calamity or not we can only tell by experiment. Now our learned brother says that he has to work sixteen to eighteen hours a day. When he is working the extra ten or twelve, he is shutting out some other man who ought to have part of the job, and that is just what we want to do with Socialism. When he has performed his part of the public service, shut him off and give him a chance to improve his mind [laughter], and put some other man in who shall have a share of the toil and then a share of the opportunity for mental improvement; for no man, either in medicine, the ministry, law, or newspaper work, can improve his mind beyond a certain point of strength, and what he has after when he goes beyond that point is more than his share, and he is perfectly willing to have the other brother sitting around doing nothing while he pockets more than his share. That is the best point in favor of organized

Socialism we have had here this morning. [Laughter.] I think the lawyer ought to be put in with the shop-girl, because the lawyer who hasn't sense enough to share with his weaker brother ought to be compelled to see that there is just as much in the sharing of work as there is in the sharing of income.

I have in my hand the outside page of the September 7th *Judge*, I suppose prepared especially for this meeting. [Laughter.] Here is a picture of a figure called "Socialism,"—enormous muscular development, with a small head; arms labelled "agitation" and "demagogism," pressing one hand against a pillar called "capital: railway growth and enterprise," and the other hand against a pillar called "labor: progressive industrial combinations." These are the two pillars in the "Temple of National Prosperity." Underneath the picture are the words: "Danger Ahead. Shall we permit the Samson of Socialism to destroy our national prosperity?"

Unfortunately for that whole conception, Samson was the delegated agent of the Almighty to tear down Philistinism, and the temple that he destroyed was a Philistine temple. He was a judge of Jehovah, and, while he exercised his muscle in defence of his people, the Philistine civilization assembled with its wives and children, who had come out to see not a Roman, but a Philistine holiday, and he was perfectly willing to sacrifice himself for the good of his people. It may be that modern Socialism is Jehovah's chosen judge. It may be that our whole civilization is Philistine in its conception, in its full outworking. It may be the pillars that hold it support the children of the aristocrats who watch the struggle of the common people. If that is true, whether it is a threatening calamity or not, as God is God, and God is right, Socialism is going to down Philistinism, and give the common people a better chance. There is nothing sacred under the sun except man. I think the finest phrase in any literature is found in the Old Testament: "And he made man in his own image and likeness." It has been the goal of the long ages of evolution to get men that could mirror the face of the Eternal. The Sabbath was made for man. We call it a sacred day. God does not need it. Temples are made for men. God does not need them. Altars are reared for men. God does not need them. Sacrifices are instituted for men. God does not need them. Institutions are not divine. Forms of government are not divine. The only sacred thing is man, and there never was a vested interest yet that didn't grumble and complain when its preserves were touched. Therefore, Macaulay said, years ago, that vested interests would protest against the law of gravity if it interfered with them. [Laughter.] Vested interests would vote the sun below the horizon perpetually if its coming did not help vested interests. Vested interests are very conservative. We are engaged in a great political, economic problem, and politics is the handmaid of economics. That is the best form of government which does the most good to the greatest number, and when our political forefathers put over the entrance to the temple of liberty this axiom, "All men are created equal and endowed with certain inalienable rights, among which are life, liberty, and the pursuit of happiness,"

they wrote an economical axiom as well as a political axiom, and the politics that does not control and manage economics is simply a mockery. It is a show when men want corn. I have no doubt that the men beyond the sea thought the colonists were fanatics when they attempted to overthrow British rule. They thought they wanted political equality. What they really wanted was economic equality, and that is what we want at the end; for civilization, like an army, crawls on its stomach. Now, if the people have a right to say to the immigrant, "You shall have a certain tract of land which shall be yours upon condition that you cultivate it for a certain length of time," then, when congestion follows that policy, they have just as good a right to reverse the whole policy, and declare that the property belongs to the common people as a whole. You remember, in a new civilization every man makes his own road. You remember, as civilization increases and houses multiply, each man works out his own road tax for himself. Then we levy a tax upon the public, and hire men who shall make roads, and these roads are public property, and it is a reversal of type when the great steel highways of a nation belong to private individuals and corporations instead of to the public. We have simply gone back to the monkey stage. [Applause and laughter.] In the primitive civilization every man made his own path and owned it. Then the community took charge of it, and owned it. It is inevitable that the same principle shall work itself out until the government shall own and control the railroads. They are public highways, they belong to the public as a whole, and it is a shame that the postal department should sweat blood for the privilege of carrying postal matter from sea to sea over roads that ought to belong to the general government.

Now, there are two or three sides to this. I have a friend who got interested in the social questions, and one of his deacons came to him and said, "I wish you would preach on this text: 'If a man will not work, neither shall he eat.'" He was delighted to [laughter], but he turned the swivel gun on the children of the rich, and that wasn't the direction toward which he was looking for the shot. There is as much peril to civilization and to the development of character in the accumulating of enormous capital on the backs of a chosen few, to breed a lot of boys and girls who do not have to work, do not know how to work, and have nothing to do but spend money and raise the devil between meals,—just as much danger there as there is in the lowest class that is crushed by the burden of capitalistic ownership. I heard Joseph Cook say once, in Boston, that civilization was like a glass of beer,—at the bottom the dregs that nobody wants to drink, at the top the foam you have to blow off because there is nothing in it but air, and between the two the amber fluid that cheers and, if you go beyond a certain point, inebriates. What we want is to do away with the dregs, but we want just as much to do away with the gas bubbles on the top. [Laughter.] I do not know of any form of organization of a great community that will do it except the social order, "To a man according to his value," and some of them would go off the face of the earth so quick you wouldn't see them. [Laughter.]

Of course, they say there is great danger in interfering with the personal

equation in private initiative, and all that sort of thing, that men won't do as well on a salary as they will in the hard scramble of life. Now, if I were at the head of a great corporation, I should expect just as good service from my attorney, if I paid him fifty thousand dollars a year and controlled him, as though I paid him a fee every time he won a case. If I employ a physician to take charge of my family and agree to pay him a thousand dollars a year, I expect just as good service as though I paid him five dollars every time he crossed the threshold. If I were a layman in a pew, I should expect just as good sermons if I paid a pew rental of fifty dollars a year as though I paid five dollars for each sermon and sent around a turkey Thanksgiving. [Laughter.] The three fine forces of our civilization in our government are the army, the navy, and the post-office. You won't find men of finer initiative than Commodore Dewey and Admirals Sampson and Schley in our struggle with Spain. You won't find men of finer initiative than Theodore Roosevelt storming the heights in Cuba. It is a mistake to think that you destroy personal initiative when you put a man on a salary. Theodore Roosevelt draws \$50,000, and furnishes more personal initiative than any other ten men. He is butting into everything. [Applause and laughter.] That is part of his job. You cannot interfere with private initiative when it is in a man, and you cannot vaccinate him with it when he is immune to it.

I think the outcome of the whole struggle will be the reforming of the government, as the years go by, until we mean economically what now we prate politically. "All men are created equal, endowed with certain inalienable rights, among which are life, liberty, and the pursuit of happiness," and no man has a right to put a barbed wire fence around a pre-serve when it interferes with my happiness.

An English duke was walking across his field one day, and met a tramp. He said to the tramp, "Get off!" "Get off what?" "Get off this field." "Whose field is this?" "It is my field." "Where did you get it?" "My father gave it to me." "Where did he get it?" "His father gave it to him." "Where did he get it?" "He fought for it." "Well, we will settle for the possession under the old principle: we'll fight for it." [Laughter.] And the fight is on. The mere fact of possession does not give a man an eternal right. The struggle is on between the men who have not and the men who have. Until the men who have are willing to organize into legislative enactment eternal principles of righteousness, the men who have not will struggle and groan and make life uneasy.

It is a beautiful parable, that of the priest and the Levite, who went by on the other side because they were too religious to be human, and the Samaritan, who hadn't much religion, but had a great deal of humanity, who gave his beast of burden and his oil and wine and money and night's watch and credit. It is a beautiful parable. In the name of the Lord God of hosts, I call for an order that will make safe walking by the wayside, and not leave any man lurking behind a rock for an attack upon another defenceless man. If it is right to organize to lift burdens, it is right to organize the social order so that there shall be no burdens to lift. [Great applause.]

MR. JAMES MCCLIVE, of Buffalo.—Mr. Chairman, my hearing is so imperfect that I could not hear just what was said, but I am going to paddle my own canoe. I am a Christian Socialist right down to the toes. I have been at a great many public meetings, and have met people on the street and along side lanes, and they have asked me, "Who are the Socialists, anyway?" Well, I have said, "S-o-c-i-a-l-i-s-t can't spell 'devil,'" and that is about as good a definition as we can have. You cannot make a devil out of a Socialist. I am somewhat surprised in this city, in the meeting of this Association last night, to find that there are two classes of Socialists. Now we have got to harmonize Socialism. I heard one speaker say that, if capital employed labor and made use of the profits arising from it, he was nothing but a thief. He argued that labor ought to have the whole thing and capital have nothing. That is not Christian Socialism. The Socialism that the world is craving for is absolute fairness. I presume the gentleman who has just preceded me struck the key, but you applauded so much that I couldn't hear what was said. I believe he was right. [Laughter.] Some argue that the Bible is not true. Now Socialists believe in the Bible. They believe that, whatever measure you give, God will measure back. I have maintained that doctrine in the churches in this city, in Bible classes and among members of churches of high standing, and they say that will never stand the test of business life. It will. I have tried it. I am not going to tell you where I come from or what I am, but I have given more than I have taken all my life, and I did it on speculation, because it is profitable. God says, whatever you give, he will give back good measure. I have asked the question, "Will it pay to give five pecks to the bushel in trade?" I have been told it will not do. I say it will. People in this world are making shipwreck of fortune by trying to get more than they are giving. Now that is the policy that Socialism says the devil has, and we have got to obliterate it from business life.

There is something here that should be thoroughly well known and should be considered. What does Socialism carry? It carries the grandest theories this world ever knew. There has not one of the speakers touched upon the grand things that Socialism carries. I am going to refer you to the island of New Zealand. Fifty years ago New Zealand was a dangerous island. If a ship were wrecked on that island, the sailors were likely to be eaten up within twenty-four hours, because the inhabitants were cannibals of the worst description. They have the most progressive government to-day on that island that there is in this world. A man from that island was asked here in the United States, "How do you deal with trusts?" He said, "We have no trouble with trusts: it doesn't affect us." Some argue that Socialism upsets everything. It doesn't upset anything. It simply goes to the people, and asks them what it is they are asking for.

MR. KLENKE, of Buffalo.—Mr. Chairman and friends, I would not take up any of your time if it had not been for the fact that the previous speaker has somewhat misrepresented what Socialism stands for. There is only one organization that can speak for the Socialists, and that is the

Socialist party, which is affiliated with the International Socialist party of the world. The Socialist party does not propose to give any man a profit, because profit is something you get for nothing, and, when you get something for nothing, it is necessary that you must be doing somebody. We Socialists are opposed to profit. The gentleman says that New Zealand is a Socialist colony. It is not. It is true that New Zealand was once used as a penal colony of the British Empire, and it is a fact that those criminals of English blood have been able to set up a better form of government than the one that declared them criminals, but, nevertheless, New Zealand is not a Socialist colony, and Socialism is not in vogue there.

I want to say that Socialists are not believers. This is an association for social science, and I understand that science and belief do not jibe together. Science means investigation and accepting indisputable facts. When a man believes, he accepts something without investigation, and the Socialists do not accept anything without investigation. That is what I understand as science.

There are some people who say that there are two kinds of Socialists. There is only one kind, and the other kind is out of gear somewhat. If anybody thinks there are two kinds, he is mightily mistaken. Of course, the charge has been made that Socialism is irreligious, which the Socialists deny. Christ, for instance, taught certain doctrines, and the Socialists believe that his doctrines were good. For instance, when Christ wanted to ride into Jerusalem, he told one of his disciples that at a certain place, to a certain post, an ass was tied, and he directed the disciple to go and get him, and the disciple, being imbued with good capitalistic morals and ideals, said, "Well, what will I say if the owner of the ass comes along?" "Why, tell him the Lord has need of him," which emphasizes the fact that Christ only recognized the title to any piece of property which lay in its use. The ass was not being used by its master, and Christ needed it. The Socialist also emphasizes the fact that the possession of anything should only lie in its use. Now the railroad corporations do not use the railroads to ride on. They use them for the purpose of robbing us, and to say that these people are entitled to that amount of property is to admit that, if I leave this building and go through the bushes in the park, and a gentleman has a lead pipe and tells me, through the ownership of that lead pipe, "You shell out," of course I do what he wants me to under the moral persuasion of that lead pipe. Now, if the railroads are entitled to what they are getting through the ownership of the railroads, if the factory lord is entitled to what he is getting through the ownership of his factory, then you must admit that the owner of lead pipe, or a six-shooter, is entitled to all that he gets.

Society has protected itself against the highwayman by making law. The Socialist says there is no difference between the highwayman and the owner of a railroad or the owner of a factory, only the owner of a factory holds up the whole people at one time, while the man with the lead pipe only holds up one at a time, and consequently they want to put him out of business, but we Socialists propose to put them all out of business.

Another thing I want to reply to. One of the gentlemen says we should do something for the girls in the department stores. I believe Mr. Ghent has pointed out very conclusively that the working class will have to work out its own salvation, and the gentleman, I understand, that spoke of the department store girls and about trying to help them is a member of the bar association, which is a good union, and the bar association allows no scabs among its members. If a fellow scabs, they kick him out, and the bar association is working for its interests and trying to do something for the lawyers that belong to it, and they are opposed to any scab work. They see that the member puts a pretty good price on his labor. The only help that can come to the factory girl and to the department store girl is when they begin to realize their position in society, that they are members of a certain class and that their interests are identical, just as the lawyers discovered that the interests of one lawyer are identical with the interests of the others, and that they must work together in order to get the other fellow. So must the factory girls get together, as well as the department store girls, and organize for the purpose of raising the price of their labor, just the same as a lawyer sticks up for the price of his services.

I do not believe the working class is going to advance by somebody trying to inject a little charity into them. We Socialists believe that the working class is strong enough numerically to work out its own salvation. That class, of course, as Mr. Ghent states it, is to-day somewhat demoralized: it doesn't know, it still looks for friends, and friends have continually betrayed it; but the working class has the power and the ability to achieve its own emancipation, and the Socialists are simply injecting the germs of education into that class, which continually grows, and which will bring the working class to a standard of intelligence where they will take control of the things that they need for their use, just as Christ assumed to take the ass because he needed it.

MR. JOHN MARTIN (the Chairman).—Perhaps you will permit me, in bringing this discussion to a close, to make one or two remarks, since to my surprise, I found that Mr. Ghent, perhaps misunderstanding the position to which this audience and this Association had attained, delivered a very able paper, rather directed, as one might say, to the graduates in social problems,—a discussion of methods for reaching a goal upon which, he assumed, we were all agreed. I could not help thinking, when Dr. Weber was relating how the States of Europe, separated by religion, by language, by national interests, are getting together and actually by treaty securing labor legislation for the protection of their women and children and their wage-earners, what a disgrace it is to these United States that, nominally one nation, with one language, not separated by such antagonistic State interests, we have a diversity of laws on this subject, and are unable, at present, to get the Southern States and the Western States and Massachusetts and New York to combine to pass as good regulations for the protection of the life and health of our citizens as those States in Europe have actually already accomplished by treaty! Surely, if we cannot get Federal laws on account of our Constitution,—that most irritating obstacle to progress,—if we cannot get Federal legislation which

will cover all the States, might it not be possible that we here, in one nation, should get together, and by agreement between the States do nearly as well as the French, the Germans, the English, the Spanish, the Italians, and the Belgians, and others are doing in what we are accustomed to regard as effete Europe?

Now the main contention of Mr. Ghent was that the only method of securing progress,—admitting that Dr. Gifford and most of the people in this room belonging to that middle class which, Mr. Ghent declares, is doomed to extinction are so earnest in their desire for reform that they would fain see betterment of our social conditions, and perhaps would fain ward off their own extinction,—Mr. Ghent says the only way to do anything is to form this party which arrogates to itself, according to the last speaker, the sole right to dub itself Socialist,—to form this one party, based upon what he and the last speaker have defined as class consciousness, and to give up once for all the attempts we have been making—I do not doubt Dr. Gifford and you in Buffalo have been making—to get improvements by here a law and there an improvement, here a better school and there a settlement, etc. Mr. Ghent asks what can we point to of progress in the last twenty years to justify our position. Then he goes on to examine the existing social state and to point out exactly the evils which we also have been pointing out during these twenty years. He says that the railroads are killing more people now than they were twenty years ago, and he says, in effect, that, although the whole nation, with the exception of a small class, has been anxious to stop this killing by the passage of safety appliance laws and so on, the whole nation, practically, has been unable to attain this object, but, if the whole nation would simply change its name and call itself the Socialist party, then by some magic it would be able to secure its will. Now I ask, if the American people have been unable, all united, to get the enforcement of these various laws, what hope has he that simply by changing their name and calling themselves another party they will by some magic become much more capable?

He argues that wages have not increased (he produced a lot of statistics, most of which, I think, he himself had to say were open to some suspicion, were hardly provable), and he did say, what is indisputable, that prices have increased during the last decade. Suppose we call ourselves Socialists, would that prevent the great increase in the supply of gold from raising prices? Of course, if we had control ourselves of the industries, as we opportunists would desire, we should be able to increase wages proportionately; but I cannot see how he holds the reformer responsible for the large increase in the output of gold. I cannot see how it affects his argument that step-by-step reform is ineffective. In Germany step-by-step reform is repudiated by an enormous party, which stands by the doctrine which Mr. Ghent enunciates. Has that party in Germany prevented the increase of prices? Has that party in Germany been more effective in securing the betterment of social conditions than have the reformers in America? His whole demonstration is of the difficulty, the enormous difficulty, and complexity of the problem which we are facing. His whole demonstration is of the impossibility of getting a panacea applied speedily,

his whole demonstration is of the necessity for getting closer combinations of the whole people upon these measures of betterment. But it seems to me that this whole demonstration does not prove at all that, given the whole people, for instance, in favor of public ownership of railroads, you would get that public ownership of railroads any quicker by simply persuading the whole people to call themselves class-conscious Socialists.

We shall get the whole people,—we have Mr. Bryan, for instance, leading a great section of the people already in favor of public ownership of the railroads,—we will get that public ownership of railroads in this country far more quickly by organizing opinion in favor of that particular step rather than by ignoring that particular step as being only unimportant, and insisting that we must all join a Socialist party and commit ourselves to that total programme before we take any step at all.

I should like, if there were time, to take up one by one a number of points which I noted in Mr. Ghent's argument. However, in this Association the necessity at present is rather to bring home to our members the urgency of radical social reforms at all rather than to spend our time in bickering with one another as to what we will do to get those reforms when we are agreed upon their necessity.

The meeting is now adjourned.

[Thursday Evening, September 12.]

DR. ISAAC FRANKLIN RUSSELL called the session to order at 8.15, and announced that Hon. Charles Bulkley Hubbell, chairman of the Department of Jurisprudence, was unable to be present because of illness; that in the absence of Hon. Martin W. Littleton, who would not be in the city until Friday morning, Mr. Frank Hendrick had kindly consented to exchange places upon the programme with that speaker, and would present his paper at the close of the address to be given by Hon. Charles B. Wheeler, of Buffalo, whom the chairman then introduced.

Judge Wheeler then read his paper.

II. DEPARTMENT OF JURISPRUDENCE.

I. PROGRESSIVE INHERITANCE TAXES.

BY CHARLES B. WHEELER, JUSTICE OF THE SUPREME COURT,
NEW YORK.

I have selected as the subject for the paper I am about to read "The Tendency of Recent Tax Legislation, with Particular Reference to Death Duties and a Progressive Inheritance Tax." In the beginning I wish to enter a disclaimer as to anything original in thought or arrangement. The paper contains nothing which has not been before stated by others more ably than I have here stated it. It consists, rather, of a remarshalling of some facts and a restatement of principles in connection with them, which sometimes clarifies the thought and strengthens conviction. It is with this view in mind that I have written what I am about to read.

The suggestion made in a public utterance by the President of the United States, that the time might come when it would be deemed advisable to limit the accumulation of over-large fortunes by the application of a system of graduated inheritance taxes, has, perhaps, done more than any other single thing to arrest the attention of the people to the possibilities and effects of such a scheme of taxation.

The subject of raising revenue for public purposes by the imposition of a tax on the right of succession to an estate, whether by will or the inheritance laws of the State, is not new to thinkers and writers on political matters. The literature on the subject is already considerable. The mass of the people, however, have just begun to realize the immense practical importance and bearing that such a system of taxation is bound to exert in our economical and social life.

For these reasons it may not be out of place at a meeting of this character to briefly review the growth of legislation in

this direction and to consider some of the reasons in its favor, as well as some of the objections urged against it. While there have been occasional sporadic measures adopted by State and National governments to raise revenue by taxing legacies, an examination of the statute books of the various Commonwealths of this country will disclose that only in very recent years have our legislatures looked seriously to this source for revenue for the support of the government. The States have relied very largely upon what is known as the general property tax for the purpose of the necessary revenues.

The general property tax, by which both real and personal property are equally subjected to assessment and taxation for public purposes, seemed to our fathers as best suited to the social and financial conditions of the people in the earlier days. The system appealed to their imagination as peculiarly democratic. The Declaration of Independence had emphasized the doctrine of the political equality of all men before the law, and, later, when our fathers framed the Federal Constitution, there was incorporated into it a provision that "duties, imposts, and excises shall be uniform throughout the United States."

The general policy of taxation which prevailed was not only to treat every property owner without discrimination, but to tax both real and personal holdings alike and make each class of property bear its just proportion of the burden. All men and all property were to be treated exactly alike, and so there was almost universally adopted by the various States this system of the general property tax, and the necessary expenses of government were met by the equal assessment of both real and personal estates. The system was right in theory, and the social and business conditions then existing were favorable to its application and enforcement.

At the close of the Revolutionary War we were essentially an agricultural people. Wealth was represented by the farms owned and the cattle on the hillsides. The population of the country was a small population. The day of the large cities had not arrived. There were very few men of large wealth, and their estates were principally landed estates. Manufacturing was very limited. Most manufactured articles were imported. There were few great commercial houses and few large business enterprises. The day of railroads had not ar-

rived, and what general business existed was carried on in a small way without the aid or instrumentality of corporate organization. Such wealth as existed was not represented by stocks and bonds or paper securities, but by the broad acres and tangible property of its possessors. Under such conditions it was not difficult to fairly and successfully administer a general property tax, where each member of the community contributed his ratable share toward the maintenance of government, whether State or municipal; and the general property tax served its purpose well.

It also must not be forgotten that in the first half of the last century the sums required for carrying on the machinery of government were inconsiderable as compared with the demands of to-day. The functions of government were then very simple, and confined largely to the preservation of order and the maintenance of courts for the administration of justice, where litigation of any great financial consequence was only occasional. Since those primitive and simple days everything has been changed. The legitimate functions and activities of our State and municipal governments have been multiplied.

Glance at the appropriation bills of our legislatures. Outside the appropriations for the maintenance of the regular legislative, executive, and judicial departments of the government, vast sums are annually expended on the maintenance of innumerable charitable institutions for the care of the unfortunate in body, mind, or estate, for educational purposes, for the improvement of waterways and the making of good roads, for the preservation of the public health, for our National Guard and State prisons, for public parks and forest preserves, and to meet the thousand and one other legitimate demands which come with a highly organized and enlightened people.

To meet these enlarged demands, increased revenue is constantly required, and our legislators have been compelled to look to new methods and schemes of taxation.

The natural consequence has been that gradually the necessary State expenditures have been met by a resort to methods which have been radical departures from the old systems of a general property tax. Some of the methods have been so prolific of revenue as to exceed the most sanguine expectation of the framers of the statutes providing for them.

In the State of New York the receipts for the year ending Sept. 30, 1905, from taxes on the liquor traffic, were \$9,486,500.28; from the tax on corporations, \$7,832,842.86; from the tax on the transfer of stocks, \$6,631,903.22; and from the tax on decedents' estates, \$4,713,311.60. So bountiful has been the yield from these few simple sources of revenue that, while the general property tax remains unrepealed, direct taxation for State purposes has been practically abolished, and it is doubtful whether the future will see any considerable resort to the old method of a general property tax for State purposes. For municipal purposes the system of direct taxation must necessarily be still enforced, but the system which more or less prevails of apportioning a percentage of the revenue derived by the State from this class of excise taxes to counties and cities for local purposes has in a degree lessened the amounts to be raised by the general property tax.

The fruitfulness of the excise method of taxation has arrested the attention of legislators and of their constituents. It may be expected that the excise method of raising revenue will be more and more put to use, while that of the general property tax will be less and less exercised. This may be confidently predicted when, in addition to the productiveness of the excise method, it is also backed by an abiding conviction among the mass of voters that this tax is a just exaction of the State, particularly when applied to the taxation of decedents' estates. Thoughtful students on public affairs may well doubt the wisdom of entirely abandoning every system of direct taxation, by which every property holder shall be called on to annually contribute something to the maintenance of the government under which he lives. To deprive the State of the watchful scrutiny of the conduct of its affairs which tax-payers naturally give is to rob the State of one of its best and surest safeguards, and jeopardize to a degree the cause of good government. There is no better guaranty of a strict responsibility to the people on the part of their executives and representatives than the healthy interest which tax-paying engenders. A tax-payers' ticket is pretty sure to be made up of men of character and of business ability and integrity. Entire freedom from the burden of taxation,

on the other hand, breeds a thoughtless indifference to the conduct of public affairs. But, theorize as we may, we must nevertheless face the fact that for the future a very large percentage of our revenues will be raised by the excise method, and that a tax on succession to decedents' estates will be one of the principal sources of such revenue.

In the State of New York the receipts from this source are only exceeded by those realized from the tax on corporations, on the traffic in liquors, and the tax on stock transfers. It is a somewhat remarkable showing, in view of the fact that the present tax is but 1 per cent. upon that portion of an estate passing to the widow and direct descendants and 5 per cent. to collateral relations. It is but fair to suppose that any subject of taxation which so readily yields so large a return will not be quickly surrendered by the taxing powers. This form of taxation, so far as this country is concerned, is comparatively new. If we examine the statute books of the various States, it will be found that nearly all the laws imposing taxes in the nature of death duties have been placed there within the last fifteen years. In some few States such laws have existed a shortly longer time. As early as 1797 the Congress of the United States passed a law imposing a trifling duty on receipts for legacies, and subsequent to that time various States have passed laws on the rights of succession, but these imposts or death duties were, as a rule, confined to collateral inheritances, and so small in amount as to be almost designated as probate fees. It is probable that the immediate future will see a more or less general adoption of the principle of taxing inheritances, and with it will naturally follow a more full and complete amplification and development of the principle.

While the study of comparative legislation shows that the inheritance tax has become already quite general, nevertheless in but few States so far has there been any effort to incorporate into such laws provisions for a progressive tax, graded according to the amount of the estate passed, increasing in rate as the amount transmitted increases. The tax laws of Illinois, Wisconsin, Colorado, and of California already contain such provisions. It is along these lines that we have a right to expect a rapid development of the taxing

laws. It needs no argument to demonstrate that in large and wealthy commonwealths a progressive tax would multiply the amounts now realized. Its financial possibilities are so inviting that we must expect serious legislative movements for the adoption of the principle.

At this time it would be well to stop and seriously inquire whether legislation of this character is compatible with the spirit of our institutions or an innovation fraught with danger to the republic, whether open to attack on constitutional grounds or as inaugurating a policy inimical to business interests and economic activity.

It has been denounced as dangerous class legislation and undemocratic in principle. The answer to that is that, while of comparatively recent adoption in America, the method of raising revenue by the imposition of an inheritance tax dates back to the time of the Roman Emperor Augustus, 6 A.D. It has existed for many years in many, if not most, European countries, while in England, France, Germany, Italy, the Swiss Cantons, and in nearly all the Provinces of Australasia such laws are in force, but in most instances the rate is graduated not only on the degree of relationship, but also upon the size of the legacy given or the inheritance received. It is noteworthy that the graduated tax prevails in the freest and most democratic of European countries, like Switzerland and Great Britain, and in their dependencies, like Canada and the Provinces of Australasia.

On several occasions the Congress of the United States has passed acts imposing death duties on estates, legacies, and distributive shares in which the principle of a progressive rate has been adapted. As early as 1797 there was placed on the national statute books a law prescribing a stamp duty on all receipts for legacies or distributive shares in estates, fixing one rate where the amount was under \$100, a larger rate where the amount was more than \$100 and less than \$500, and a still higher rate on all sums over the \$500 limit.

Again in 1898, in order to raise a revenue to meet the increased expenses of the Spanish War, Congress imposed a duty or excise on legacies and distributive shares left by decedents, in which the rate was progressive, exempting legacies less than \$10,000 in amount, and fixing a low rate on sums

over that amount, and gradually increasing the rate as the amount increased, until a high rate was reached on sums exceeding \$1,000,000.

The progressive principle was further applied by Congress in the sixties, at the time of our late Civil War, when the United States imposed an income tax, and made one rate for the smaller incomes, and an increased one for the larger. As already stated, Wisconsin, California, and Colorado enforce progressive rates. The practice, almost universal, of wholly exempting small estates from the payment of any succession tax is but the recognition of the principle of classification of estates by which the larger estates are made to bear the greater burden, and a further recognition of the principle that legislatures may without injustice, nay, rather in furtherance of justice, place the burdens of taxation upon those best able to bear it. In the case of *Knowlton v. Moore*, decided by the United States Supreme Court and reported in 178 U. S. 41, the constitutionality of the Act of Congress of 1898, above cited, was attacked on various grounds, and it was also especially urged upon the court that the progressive rate feature of the statute was repugnant to fundamental principles of equality and justice, and the law should therefore be declared void, even though it transgressed no express limitation in the Constitution. In reply to this argument the learned justice who spoke for the court cited many instances and acts of Congress and of the various States, demonstrating that legislation was often and repeatedly passed with the very end in view of placing the burden of raising public revenues on those best able to bear them, and then used these significant words:—

The review which we have made exhibits the fact that taxes imposed with reference to ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also, some authorities think, and a number of economic writers conclude, that a progressive tax is more just and equal than a proportional one.

In view, therefore, of the practice which has obtained, not only in the most democratic of governments abroad, but in our country, we may safely assert there is nothing exceptional

or undemocratic in the principle of a graduated tax on the right of succession, nor need legislatures hesitate for any such reasons to adopt reasonable measures of this character.

Some, however, fear that legislatures may be tempted to go beyond reasonable measures, and from socialistic motives or jealousy of the prosperity of the very rich proceed to extremes, in the thought, perhaps, that the imposition of high rates on large fortunes may be pleasing to the mass of constituents. Against the policy of extremists the appeal lies to the common sense and justice of the American people. All the people ask is fair play and no favors. They instinctively admire and will follow the fair man, whether he occupies a private station or is a leader in public affairs. They as instinctively doubt the extremist. There exists no purpose or desire in the mind of the great mass of the people to deal other than justly with property or property rights. They will be the last to tolerate a spirit of war upon capital as such. To believe the contrary is to doubt the wisdom of free and representative government. And back of all is the bulwark of the courts. How far courts might go to check highly improbable legislation of the character of confiscation remains to be seen. But in the case of *Knowlton v. Moore* the Supreme Court of the United States used this significant language:—

If a case should ever arise where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of individuals, even though there be no express authority in the Constitution to do so.

The possible abuse of a legislative power is no argument against its reasonable and legitimate exercise, and the friends of a graded progressive inheritance tax may safely assert that they advocate no radical departure from the fundamental principles of our government or the spirit of our institutions, and that reliance can be placed on the good sense and justice of the people for moderation in its application. As lawyers, we know that as a purely legal proposition the right

to give or to take property, either by will or intestate succession, is not one of the inalienable rights which are supposed to precede all governments and which no government can rightfully impair. The sovereign power may deny it, and from the foundations of governments have assumed to regulate it. The power to tax the right of succession is "nothing more than an exercise of the power which every State and sovereignty possesses of regulating the manner and terms upon which property real and personal within its dominion may be transmitted by will or by inheritance." Most States have reserved to themselves the right to refuse to allow aliens to take and hold real estate as heir or legatee, and to direct that property descending to them shall escheat to the State.

In these days of modern civilization, when even the State, as a rule, waives the right of escheat in favor of aliens, any law which appropriates to the State any portion of private property, whether in the form of general taxation or death duties, must be supported on grounds of justice and reason, and not on the basis of some arbitrary legal power or authority vested in the sovereignty. Without such a basis to uphold death duties any legislation in that direction would be tyranny, whether enacted by some autocratic power or by the representatives of a free and enlightened people.

It must meet the approval of conscience. Can a moderate progressive tax on inheritance, graded on the basis of the amount of property passing, be justified and upheld on such grounds? We think the argument all in its favor.

Mill, in his "Principles of Political Economy," advocated a progressive tax, and said:—

I conceive that inheritances and legacies exceeding a certain amount are highly proper subjects for taxation, and that the revenue from them should be as great as can be made without giving rise to evasions by donations during life or concealment of property such as it would be impossible adequately to check. The principle of graduation (as it is called)—that is, levying a larger percentage on a larger sum, through its application to general taxation—would be, in my opinion, both just and expedient as applied to inheritance and legacy duties.

The Hon. James A. Roberts, former Comptroller of the State of New York, in official reports and published articles, has shown that many, if not most, of the large estates left by the wealthy have not in the lifetime of their owners borne their just proportion of general taxation. The statistics furnished in the report of the Special Tax Commission of New York, made to the legislature in January last, demonstrates that the general property tax, by which real and personal property are legally subjected alike to taxation, and by which each is supposed to bear its equal burden, has wholly failed of its purpose. The figures there given show that, notwithstanding the enormous increase in the wealth of the country within the last decade and the multiplication of millionaires, the percentage of State and municipal taxes paid by personal property has gradually decreased. In 1870 the percentage of the State tax paid by real property was 77.47, and that by personal property 22.53: whereas in the year 1905 the percentage paid by real property was 91.13, and by personal property 8.87. The tables show a gradual shrinkage from year to year in the proportion paid by personal property, while it is safe to assert the holdings of personalty, instead of relatively diminishing, have greatly increased. The means and methods employed by those possessing large personal holdings to evade their just taxable obligations have defied and defeated the objects and purposes of the most drastic listing laws the ingenuity of legislators and tax-gatherers could devise. The system of the attempted taxation of personal property has been so productive of fraud and perjury, has been so successfully evaded and defeated, that what on its face is apparently most just and fair has resulted in every conceivable form of injustice and fraud. It has justly bred discontent and suspicion among tax-payers, and the prevailing opinion, sustained by the facts, that the very wealthy do not bear their fair proportion of public taxation.

So general is this conviction that those who have most carefully considered the questions involved, openly advocate the abolition of general taxation on personalty and substituting the raising of revenue by taxation of realty and a system of excise duties. In most European countries this policy now prevails, and, were it properly understood, we

predict our own legislatures would look with more and more favor on taxation of an excise character.

The application of these significant facts is apparent, that by way of compensation for the relief of taxation on personality during life the estates of decedents should at death render to the State due and proper tribute for the protection to life and property while its possessor lived and under whose laws his property was accumulated. At the end of life a man's affairs are liquidated, a final balance is struck, the exact value of his final estate is determined, and the distributive share of each beneficiary definitely ascertained. It is then a most propitious time at which the State may assert its right to participate for the protection and preservation given the decedent during the years of his activities.

The critical may assert with some force that this is an argument for death duties and proves little toward establishing the wisdom of a graduated tax. To such we answer that, while in a certain sense most large fortunes represent the brain and industry of those who accumulate them, in another perfectly legitimate sense such fortunes and wealth have come separate and apart from any services personally rendered the community or commonwealth. The first hard-earned savings of a man generally represent personal industry, self-denial, thrift, enterprise; but, after a certain limit has been reached and the possessor becomes an investor in wide-spread business enterprises of every description, the care and conduct of such investments falls into the hands and comes under the management and direction of others, and the investor simply reaps the benefit of what his capital earns, as so much capital, outside of any personal direction on his part of the most general kinds. Many of his investments the capitalist may never have seen, and are represented to him simply by the certificates he carries in his safe-deposit box. His property accumulates and his wealth increases by the simple law of growth. While in most cases it would be impossible to say what part of large fortunes may be due to the personal equation of their creators, after all has been said, a very large portion come as the reward and increase which wealth alone brings its possessor. As was very forcibly said in the recent report of the Special Tax Commission of this State, the ability of the very rich man to reap

and enjoy the fruits and rewards of his investments depends on the laws of the State under which he lives:—

The whole power of the State is essential not only to guard and to protect his interests, but to distribute them after death. More than that, it was the State itself by its laws granting to individuals of great ability and force free sway to exercise their powers and make them productive which gave them scope and opportunity to accomplish the enormous results which we see to-day. While it is true, therefore, that ability and vigor were necessary to accomplish the end, the great result achieved could never have been attained without the active assistance and protection of the State, and this assistance and protection are more necessary to the amassing of a great fortune than a small one.

Has not the State, then, a right to require a larger share of such estates when death claims their amassers than in the modest competency saved by a professional man? And will a law be pronounced unreasonable and unjust—an unfair discrimination against the rich—if it shall ask those who succeed to such fortunes, and who had no share in their creation, to recognize in part at least these legitimate claims of the sovereignty which made the estates possible? This places the system of graded progressive inheritance taxes upon a solid and substantial foundation, free from any claim of confiscation or mere arbitrary assertion of power. It is simply requiring the rich, when death comes, to render to the State some slight return as recompense for its fostering care and protection.

To my mind it would be a great mistake to invoke any system of death duties for the purpose of destroying or lessening great fortunes simply because they are great. Any law in the nature of confiscation would be not only unjust, but economically suicidal. We must not countenance attack on property or property rights simply because of their size. With the law of primogeniture abolished, time will in the end prove a great divider and distributor. Large fortunes in modern civilization are more and more necessary for its growth and advance. Fortunately, with their increase in number and size has also come the recognition of the fact that, after all, they are held in trust for the welfare of fellow-men. In the providence of God, wealth has its place in the advance of the world;

and, while we have the right to insist on its yielding its due to the State, it would doubtless be unwise to set a limit to its acquisition.

It has not been the purpose of the writer to discuss or advocate specific rates, but to present principles. In this connection, however, it would not be out of place to suggest certain limitations and conditions which might be profitably employed in the practical application of a system of progressive death duties.

For one I have never been in full sympathy with that provision of the law of New York State which subjects real estate passing by devise or heirship to the same tax as that imposed on personalty. The reasons which make an inheritance tax peculiarly appropriate, when related to personalty, do not apply with equal force to realty. Owing to the character of this class of property, realty has always been compelled to bear more than its just proportion of taxation. It is impossible for owners to conceal it from assessing boards, and year by year it renders both the State and the municipality its due share of its income. If, for the reasons already stated, the general property tax, so far as it concerns personalty, were abolished, and the volume of public revenue raised by tax on realty and by a system of excise duties, then all the more should real property be exempted from the payment of a succession tax.

Again, I advocate the death duty should be based upon the amount coming to each recipient, and not upon the bulk of the entire estate,—upon the amount of the individual legacy or distributive share. As has been said, such a plan would make the tax less severe where the estate is divided among a number of beneficiaries than where it goes to a single legatee. It would be more just, too, in that it would enable a testator to more readily provide for members of a large family and obviate the "profound inequality" created by an arbitrary provision that the tax shall be fixed by reference to the sum of the property of another,—a principle condemned by the Supreme Court in the case of *Knowlton v. Moore*.

Such a plan, moreover, has this additional sociological argument in its support, that it encourages the subdivision of large fortunes among a number of smaller holders. A dis-

tistinguished writer has wisely said that the "chief modern industrial problem is often stated to be the distribution of property. What is wanted is widely diffused property, and it is to bring about this wide diffusion without injustice and without injuring the springs of economic activity." To this end the law of primogeniture was abolished, to this end laws prohibiting the tying up of estates for longer than a limited number of lives are on our statute books, and to so frame our tax laws as to promote these desired results should be the aim and desire of our legislatures.

DISCUSSION.

DR. ISAAC FRANKLIN RUSSELL (the General Secretary).—It is only nine o'clock. Forty-five minutes is all that the distinguished jurist took in time to give us such a wealth of good thoughts on a theme which, it seems to me, is more clearly and certainly within the range of the constitution of our Association and of our ambitious aims as a scholastic body than any other that will be found on the programme of this year or perhaps of any past year. So I hope that some of the distinguished members of the bar whom I see here will have a word to say on this notable address,—an address safe and sane, and in no way imperilling the judicial career of the illustrious jurist who has given us this fine paper to-night, and who will soon be a candidate for re-election. As Roosevelt was welcomed last night to the ranks of the Socialists, so I think I can give the right hand of a brother to the great jurist who has given us so sane an argument from political economy and sociological science in favor of this method of taxation.

But I am surprised to learn from this heart-to-heart confession of your distinguished citizen that you swear off your taxes here in Erie County. I supposed that that was a device and trick practised only down in New York City, where Tammany Hall and the foreign-born proletariat have corrupted the morals of the people. [Laughter.] But, if the judge says so, it has been so held. I remember reading some years ago in a report of the Comptroller of New York that no less than \$3,000,000,000 of personal property escaped taxation annually in this State. That must have been ten years ago. I dare say that the figures for the decennium that has just closed will give us a larger sum than that. I personally know of one estate of a man who annually swore that his debts amounted to more than his personal property, and the inventory showed \$40,000,000 of taxable bonds. But I think the trouble has been in the enforcement of the law. Everybody living on my block a year or so ago was taxed for \$10,000; but my office boy, who gets six dollars a week,—we have since raised him to seven, he is so efficient,—was taxed for \$50,000 because by accident he lived on

another block. I apprehend that that is not a business-like method of collecting taxes.

Reference is made to my old friend Adam Smith. When I was a boy, thirty or forty years ago, we used to study his "Wealth of Nations," in which he announced the true principles of taxation. I have forgotten most of what I read there, but I remember something of his teaching, and I could not help but think of his axiom that it is a good thing to collect a tax when it is most convenient to pay, and in the case of a farmer visit him after he has garnered his crops, and ask him to pay up in the fall. It would never do to ask him to pay in March or April, when he needs the money for fertilizer and to pay his multitudinous debts that have been accumulating during the winter. Now, if you apply that principle to the taxation of inheritances, it seems to me it is a good thing. Here is the exultant heir. He puts mourning on his hat or his arm for the loss of his father. But, when he is alone, he looks up toward heaven in solitude, and says, "I am a millionaire now." The tax-gatherers come and collect some, but there is a great deal left, and, if he could only state how much he might pay, he would make it as much as possible, because, the more he has to pay, the more he has left, if it is graduated inheritance tax. Now that principle, it seems to me, ought not to be overlooked. My friend Judge Wheeler, if he had had time and had pushed the economical argument a little further perhaps, might have cited the powerful authority of John Stuart Mill in favor of a limitation of the amount of property that an individual might take, either by will or by intestate succession, to a reasonable subsistence, enough money to live on in comfort or in luxury, whatever that sum is or what it may be, I know not.

I am afraid I am talking too long, but I want to say one thing more, and that is, What is this tax on? Some man will say it is a tax on property. Oh, no! Perish the thought! God forbid! Even the case of *Knowlton v. Moore* that has been cited, in the United States Supreme Court,—decided in May, 1900, if I mistake not,—laid down the doctrine, which had already been announced by the Court of Appeals in the State of New York, that the tax is not on property. No. It is a tax on the right to inherit property that is given by the State. John D. Rockefeller, Jr., or Andrew Carnegie, Jr., if there be such, cannot come and say: "Behold my billions! You must arm and fight to keep me in possession of this enormous inheritance," because, if they claim this, it is by virtue of a specific provision of the law. My mother died in the State of New Jersey, and I went home to count the money coming to me. I said, "I'll find out how much I'm going to get." I looked at the statutes, and didn't find a thing in the statutes. What is the result of that? It is this: that the glorious old common law of England prevails. That is, that, when a man marries a woman, he marries all of her personal property and collects the rents on her real estate. Similarly, in the silence of the statutes, the husband of a woman dying intestate, with no near relatives, does not have to get the property. He has it. [Laughter.] It is in his possession *jure uxoris*. He may not know it, but his lawyer knows it; and, after he pays the lawyer, he knows that he has it. [Laughter.]

If I mistake not, *Knowlton v. Moore* involved the taxation of United States government bonds. There the faith of the nation is pledged that the government itself, national, State, and municipal, will never lay the hand of the tax-gatherer on a cent or a dollar of that treasure. Say a man dies worth a million and has no land, no stocks, not a thing but government bonds,—just a million. Can that be taxed? No, that cannot be taxed. But the right to inherit it can be taxed.

MR. JAMES MCCLIVE, of Buffalo.—Mr. Chairman, we are clamoring here, I suppose, for Socialist tactics. Now I question in my mind whether this is a social problem,—this inheritance tax. The Socialist argument on this question will be, "What use will the money be put to, to give the best results?" Now it has been proved to-night by the able speakers who have interested us that in New York City the lawful tax on personal property which is actually paid into the treasury is only 8 per cent., and on real estate something like 90 per cent. That is a poor showing. A Socialist would say, Tax personal property just as high as you tax real estate, and the question might arise, How are you going to find it? Just simply invalidate the right to hold property that is not taxed, and that will cover the whole system, and it will then all go in.

The question is, Who will do the most good with the money that is got through an inheritance tax? That is a social question. What is going to be done with the money? I do not fully agree with the idea of an inheritance tax. I think we should tax a man while he is living and making his money and make him pay his proper share, and, if we do that perfectly, we need not fall back on an inheritance tax to fill up our treasuries. If my memory serves me right, Mayor Adam has said there was sixty millions' worth of personal property in this city, and it is assessed for only six millions. That is only ten cents on the dollar. That is a bad showing. The Socialists say, "Look after this, look after the pig while it is in the pen, don't allow him to escape."

DR. RUSSELL.—I have the honor to announce Mr. Frank Hendrick, of the New York bar, an author of works on "Railway Control by Commission," "The Power to regulate Corporations and Commerce," etc., who will read a paper on "Policies, Reaction, and the Constitution." Mr. Hendrick has been prevailed upon to take the place of Mr. Littleton on this evening's programme.

MR. FRANK HENDRICK.—Mr. Chairman, Ladies and Gentlemen,—I am at a little disadvantage, and I ask your charity, on account of the fact that a good many people came here to-night to hear that brilliant speaker, Mr. Littleton, but I have an advantage in the fact that I have been preceded by a man who is a good example of the value of the judicial mind in the treatment of an important subject. The judicial mind and the procedure of due process of law are things upon which I shall insist in my paper. I have a living example of it just before me, and it is a good thing for me that you may have it so immediately in your mind.

Mr. Hendrick then read his paper.

2. POLICIES, REACTION, AND THE CONSTITUTION.

BY FRANK HENDRICK.

Never, in my opinion, was the American system of "government by law under a written Constitution" more seriously threatened with eclipse or its necessity to popular government more clearly shown than at the present time. There are two forces supporting, in the name of law, conflicting errors. The truth, being in the middle ground, has been obscured.

On the one side are the "policists," or those executives who believe that they, of all men, have been specially called to remedy wrongs which the public is suffering at the hands of corporations. That the cry is set up and echoed by the policists themselves is immaterial; that the cry is "my policies," and not "public policy," matters still less; that "policies" are temporary, while wrongs are continuous, is of more importance, but comparatively of none in the question of *whether the policies will remedy the wrongs at all or do not really prevent a correction of them.*

On the other side are the "reactionaries." They advocate a relaxation of activity upon the part of the Federal government and increased activity upon the part of the States, and particularly of the State legislatures. They are really State policists.

Both the policists and the reactionaries propose to restrict the exercise of the power of the judiciary, and particularly of the Federal judiciary. It is not necessary to deny that well-intentioned, and to that extent well-advised executives who are policists have made commendable efforts toward regulation through the courts. Their achievements by this method take away the only possible defence of their "policies."

That wrongs exist, no one disputes. Wherever progressive and industrious men live in communities in which the social element is of itself wealth, the hand of justice is always needed to direct the social economy to its highest object, public and private. That the far-sighted and patient individual should

have a large share in the fruits his planning has brought forth is the counsel of those who fear that foresight and patience may lose heart. That the community may have a great proportion of the benefits of the industry devoted to its service is the hope of those who see in that plan the foundation for a greater unearned increment of common wealth. That the individual shall have such profit as may reasonably be supposed to have been an incentive to him, and likely to be to others in the future, and that the public shall have that share which is due to the *public* character of the service over and above such profit, is and, under our system of government, always has been the *rule of law*. And ever since Adam Smith created economic science by showing that *National Wealth* must be treated without reference to *Power*, the counsel that the power of government be so applied for the restriction or the punishment of the wrongs of trade and industry as to curtail or to destroy their fruits has been universally regarded as uncalled for and unwise.

Evils necessarily arise in industrial progress from the attempt by individuals to get more of a profitable business and under more favorable conditions, or to get more from the public for a given service and at the same time more opportunities to serve the public. This it is attempted to do by destroying competition. But no man has the right to do this in a free community, and the reason is that the existence of such a right would negative the right as such to engage in commerce, industry, or public service. Under the long-established rules of common law no man may make a contract *for the purpose* of restraining trade, and every public service corporation or individual engaged in a public calling is under obligation to perform three common law duties,—to serve adequately all who apply, to serve all equally, and to serve all at a reasonable rate.

How simple, then, is the wrong, and how easily ascertainable! The impulse to commit it is actually concomitant with the exercise of the right which it violates. But how simple the remedy! Prove the fact in any court of common law, and get relief! We read of a citizen of France who sued to recover an overcharge of three sous from a railroad. The trial cost the railroad several thousand francs, and the citizen prevailed.

There are hundreds of courts of common law in the United States where the same relief may be had, and there are thousands of lawyers ready to prosecute actions so likely to be successful without expense to the complainant. One case establishes a rule for the future. An action by one individual in Philadelphia established a new rule of street-car transfers for the whole city.

To a demonstrative but, let us hope, unrepresentative class of our citizens, the deliberate, orderly administration of justice is irksome. These modern Anglo-Saxons are not quite satisfied with even-handed justice. If they could only have the privilege of taking it out of the other fellow without paying the tribute to free government which is necessary to its existence! This privilege the policists will recklessly promise if they be but continued in office, unmindful always that it is the very principle of special rights that *they* are attacking. They are encouraging what Mr. Root calls the popular struggle for the right of inequality.

The plan of the policists is this. The legislature, elected for one or two years and bound by special rules in the passage of its acts and their going into effect, permanently delegates its power to an executive commission which is not obliged to come back to the people for re-election and not subject (supposedly) to any restrictions except, in formal deference to the common law, that their orders shall be reasonable. On the complaint of a citizen or upon its own motion the commission makes *an order*, which is given, by the act creating the commission, *the force of law*. Strange to say, statutes creating a commission do not attempt to change the principles of the common law, but all commence by asserting them and then charge the commission with the enforcement thereof. The laws creating the "commission with power" give to it independently of the courts the power to enforce the common law. There is, however, this difference between the courts and the "commission with power," that there is apparently no way to compel the commission to act. It may feel the influence of the appointing power or of the power that controls the appointing power,—an attribute the absence of which characterizes the power of the judiciary as much as the inability of the judiciary to avoid the exercise of that power.

There is, too, an affectation of "appealing to the people" so as to make the *legislature* delegate power to a commission,—a circumstance which negatives the idea that the power is judicial. But the assumption that the people either would or could authorize their representatives to delegate *legislative* power is rebutted by the very foundation principle of popular government. It is said commissions may be looked upon as inferior courts. The answer to this suggestion was given by Gouverneur Morris in his speech on the Judiciary in the United States Senate in 1802. "The nature of their offices," he said, speaking of proposed commissioners, "must depend upon the law by which they are created: if called to exercise the judicial functions designated by the Constitution, they must have an existence conformable to its injunctions." The sole *purpose* of creating the commission is, moreover, to regulate private property (for such the property of public service corporations has uniformly been held to be) without the deliberation and delay incident to due process of law. Thus both the method and the purpose of such statutes, conferring, as they do, the powers of all three departments of government upon one, violate those principles of the Constitution upon which the power of the people and "government of law" rest.

But it is said that the power of the commission is largely minatory. Penalties to a defeated defendant may be made so heavy as to induce the cautious to suffer robbery or treat for immunity rather than risk ruin. But the *Constitution* ordains not only that private property shall be immune *from unlawful attack*, but that *every owner of private property shall have his day in court*. And under this ordinance the maxim that "the poorest man in his cottage may bid defiance to the Crown" is of no more importance than that the greatest corporation, being neither compelled to ask nor permitted to receive immunity, should get *exact justice* under the law and equity now administered therein as necessary to one another in these matters, in the ordinary courts of common law.

But the policists appear to desire only such justice as is subject to their control. Some credit them with the keenness to observe that no corporate wealth can be so swollen as to be unable to get inside the court-room door unhurt, or so criminal

but that the unconstitutionality of the acts done in effectuation of their "policies" enables the corporations to come smiling out, unwhipped of justice, unexposed, conscious of having avoided adding anything to the stock of public information upon their business, and not afraid to sin again. The currency of this impression is unfortunate, discrediting as it does proper methods of regulation and the executives who employ them. The *bad policies* of good men *discredit* not only the men, but their useful measures.

The wrongs committed by corporations are, in great part, such that it would be well for the corporations if they might be avoided. Corporations depend for their enrichment upon progress in social economy, and that progress is advanced by nothing so much as by the participation of the public in the fruits thereof. And unfair methods are not only in the long run unprofitable, but, if *honestly* attacked, capable of speedy redress. But the "commission with power" is the very symbol of impotence, and thus not so much a menace to corporations as an actual, present, real calamity to the public. It is an incontrovertible *fact that no order of a commission can be made effective* or statute enforced without an order of a court.* But are not the courts of common law open to the "poorest cottager"? Then why have a scarecrow commission with pretended power to make an order? Has it not, moreover, been decided by the highest court in the land, within the past few months, that in matters of public service the existence of a "commission with power" closes the doors of every court on the basis of the common law to every individual?† The impossibility of one body considering more than a small part of the innumerable controversies, and so preparing cases for the courts, makes it, under the decision, a physical impossibility for more than a small part of possible complainants to have access to the courts even under the statute. And this decision was upon the law as it existed before the amendment embodied in the "Railroad Rate Law of 1906." The new law makes the situation worse, if possible, the unconstitutional powers pre-

* *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79; Dicey, *the Law of the Constitution*, 23.

† *Texas & Pacific Railroad Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426.

tended to be conferred by that act upon the commission having for their chief probable effect the sending of the commission to court as enjoined defendants rather than as straightforward complainants. Who would expect the Don Quixotes of the "commission with power" to prepare a case and go to court as complainants in the first instance without exercising their so-called power? They know the windmill only by its blow, and continue to charge on to the destruction, not only of their official selves, but also of the fond hopes of a deluded public. The mill of the Federal judiciary has many arms, and grinds unconstitutional acts eternally. No wise official will run counter to its power. But the "commission with power" itself assumes to act judicially. "To determine what shall be a measure of compensation is judicial power."* "To inflict punishments, after finding the default," said Chief Justice Ruffin, of North Carolina, "is to adjudge; and to do so without default is equally so, and still more indefensible. The legislature cannot act in that character."† For a commission to pretend to do, without subjecting itself to injunction, what might be enjoined if done directly by the legislature, would be absurd. Still less, then, can a commission *adjudge*, without being doubly subject to injunction, as a *delegate* of the legislature. It cannot, therefore, of itself exercise any power to correct wrongs.

The only effect of an order is to ascertain whether the corporation will comply. And the ascertainment of disobedience comes in the form of a court order enjoining a commission from exercising delegated power. This renders it impossible for a commission to prove a case, the technical unconstitutionality being a sufficient bar. But the moving corporation may go on and prove that the order is not only technically void, but of itself confiscatory. And the moving party has the advantage of framing the issues, and thus determining what proof on behalf of the public shall be relevant. But the commission may ascertain intention not to comply upon a recommendation. The technical bar is then avoided, and the recommendation is as effective as a statute.

* *Monongahela Navigation Co. v. The United States*, 148 U. S. 312, p. 327.

† *Hoke v. Henderson*, 4 Devereux (Law), 1, a famous leading decision delivered in 1833 by Chief Justice Ruffin, of North Carolina.

The commission, in moving to enforce it, may frame its own issues and prove everything relevant thereto. In this way it can prove and check every injustice that exists and can be ascertained. When none can be ascertained, power to punish should not and cannot exist.

The proper functions of a commission are: first, to avoid anything which may be construed as the independent exercise of power belonging to any of the three great departments of government; second, to aid all three departments by investigating, reporting, and disseminating facts of interest to the public or making them the basis of an action in the courts; and, third, to apply the rules prescribed by law for the issue of stock and bonds by public service corporations, and, subject to mandamus by the courts, to disapprove of such proposed issues or of such proposed contracts of public service corporations concerning the use or disposal of their property as do not conform to law.

The experience of Massachusetts, where the courts of common law are still open to individuals, and for the last forty years have been their only recourse, and the commissions have had none except the powers just enumerated, illustrates the true nature of a commission, the positive force that a knowledge of facts gives to the sense of justice of the community, and the real bond of interest that unites private enterprise with the general public.

In that State, with no more show of power than was embodied in the advisory commission system, the gas companies, by agreement with the public, increased their profits by reducing their rate from one dollar a thousand feet of gas to eighty cents from 1903 to 1907, and average passenger fares per mile were reduced gradually from 2.51 cents in 1871 to 1.70 cents in 1905, and average freight rates per ton mile from 3.11 cents to 1.14 cents in the same time, the passenger rates being much less than the average for the whole country, and the freight rate much lower, considering the element of the great distances and the great quantities of freight hauled in one load in transcontinental as compared with interstate traffic. In Massachusetts, control has been in every way as near perfection as it now seems possible for human institutions to achieve.

The New York Public Service Law, recently passed, but for inconsistencies of form and empty and misleading phrases pretending to confer power, which may cause it to be declared unconstitutional, would be an ideal statute. The legislature planned a "commission with power," but, immediately before its passage, nullified the penalty provision, which had been copied from the Federal Railroad Rate Bill of 1906, by a provision prescribing to the courts a remission of the penalty incurred by any defendant who had brought an action to determine the justice of the commission's order. The purpose of this change was to save the act from unconstitutionality and to preserve jurisdiction to the State courts. Now that this purpose has been expressed in substance in the statute, the necessary amendments may be readily made.

This done, the plan will then really preserve not only the statutory jurisdiction, but also the common law jurisdiction of the State courts. The commission's order is really a recommendation, and the act may be, and is, it appears, actually being worked exactly as in Massachusetts, where the three departments of government stand behind the commission: the Executive, ready to bring an action through the Attorney-General; the Legislative, ready to enact the recommendation into law; the Judiciary, ready to make a decree on the complaint of a citizen or of the Attorney-General upon either the common law, the recommendation, or the statute. The enforcement of an enactment of a commission's recommendation would very rarely be enjoined, as the assertion that specific, partial regulation would be confiscatory would not be seriously urged or considered by a court. The legislature has the undoubted right to regulate within limits of reason and confiscation, and the records show that the courts have always leaned as far as possible to support the legislature. The recommendation of the "commission without power," based as it is not upon arbitrary power, but upon work and knowledge, is always heeded, and tyranny and contention are replaced by conciliation and cooperation. In New York the commission may itself move through its own counsel. The Attorney-General no longer stands between the people and the courts.

The "power" in the old Federal statute to "order" a change in a present schedule rate, or the "power" in the new act "to

fix" a rate for the future, conflicts with the power, as such, of the railroads "to fix" reasonable rates. But the requirement in the advisory system "without power" that schedules of reasonable rates be filed does not relieve the roads from the perfectly consistent requirement that the schedule rates shall be reasonable. The "commission with power" can attempt to change the schedules or to punish the roads for departing from the schedules, but it cannot consistently hold the roads for charging the unreasonable rates in the schedule when they are forbidden by law to depart therefrom. And the courts, according to the Abilene case, will not permit individuals to bring the actions which the statute excluded, as the court says, by including the conflicting requirement. The "commission without power" does not attempt to punish, but leaves it to the courts to compel both the filing of schedules of reasonable rates and the charging of the schedule rates. The attempt to punish of the "commission with power" does not enforce penalties, but creates immunities.

But the "policists" continue to demand that judicial power be conferred on commissions, and that this power be delegated by the legislature,—a circumstance which would render the grant invalid even if the judicial power properly belonged to the legislature. Clothed with this assumption of power, the "policists" insist on getting the managers of corporations with their backs to the wall, and the label *public enemy* upon their foreheads. Nothing is left to these managers, in representation of their principals, but to take advantage in every possible way of the unconstitutionality of legislation. War is declared, and they must enlist for the whole war, and they always come out victorious, without even having shown their plans or forts to the *enemy* public, giving them, for their sole added information, only the same old lesson in constitutional law. The net result of "policies" is not, however, merely a failure to regulate, for, through the relegation into disuse of simple, effective remedies for wide-spread wrongs, impunity and immunity are offered to all who commit these wrongs. The "commission with power" and the so-called "laws with teeth," or, more properly, spurious statutes with false teeth, may be compared to barking dogs that terrify the innocent and do not bite the wicked.

The "policists" pretend that they desire that the full power of government be exercised in behalf of the people. There is, doubtless, a vast field of governmental power and usefulness yet unexplored. But the existence of the power of the government to do a thing does not prove that to do it would be just, politic, or useful. Nor does the existence of a particular power prove that a particular method of exercising it would be either constitutional or effective. Nor does the power of the three departments of government, working together within their proper limits to accomplish an object, receive support or illustration from the attempt of any one department to exercise this power alone in usurpation over the other two. The law provides such fit and adequate methods for the administration of justice that they deserve no credit for their good intentions who, through lack of skill to apply the law, misdirect and destroy its power.

The force next to the "policists" most obstructive to a solution of these great problems is, strange to say, the opposition made to the national policists by those who are called "reactionaries." They talk about the powers of the States, and desire a negative national policy and a positive State policy, and criticise a positive national policy as a restriction of the policy of the State. *There can be no conflict between State and Nation upon the question of their respective powers, unless the Constitution is violated.* The question of corporations and commerce involves in no way territorial limits, but only the nature of the policy, or rather the method of applying fixed rules of law. Nor need there be any conflict of jurisdiction between State and Federal courts that is not resolved by *laws and rules of long standing and settled and accepted application.* What matters it by which government justice is administered, provided it be by due process of law? The distribution of Federal courts, if we grant that the apprehension of usurpation by Federal courts is well founded, is reasonably decentralized, and the law applied is the same as if the trial were held in a State court. *But when unconstitutional statutes are made,* a conflict arises to which there can be but one outcome. When persons pretending to act in behalf of a State violate the Constitution of the State or of the United States, they have no rights, they have no powers, any more than persons

pretending to represent the nation would have under like circumstances, and they cannot appeal to self-government, for they are themselves attacking self-government and all "government of law"; and nothing but such acts as theirs causes the Federal courts to restrain State officers.

With what warrant, for example, does the legislature of North Carolina forbid the charging of rates above those fixed by the legislature or a commission under penalties so great as to deter a railroad from risking a trial of the constitutionality of the law? No statute can be conclusively presumed constitutional until the courts enforce it. The assumption by the Interstate Commerce Commission from 1887 to 1897 of the power to fix rates for the future as well as to declare a present rate unreasonable was not secured by a ten years' waiver of their rights by the railroads, and was declared at the first test in the Supreme Court, in the case of *Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific R.R. Co.*, 167 U. S. 479, never to have been granted. Surely, then, the officers of North Carolina have not the warrant of the people. The people, by the Constitution, confided to the *judiciary* the charter of their liberties, having bound themselves not to trust their ship of State, or to compel any man to risk his life, liberty, or property upon an unsafe sea, beyond the limits of the charter, without rudder or compass, in the hands of *men* who bid defiance to the law of their commission. An officer who will not be guided by the chart and the pilot cannot be trusted with the ship. All officers, State and National, are sworn to uphold the Constitution of the United States.

"It will be a sad day for the people of North Carolina," said Judge Pritchard on July 22, 1907, in freeing ticket agents from the chain gang, "when its citizens are *prohibited by the acts of the legislature from asserting any right guaranteed them by the Constitution of the United States.*" Such an act, he held, is not law. The decision in *Consolidated Gas Co. v. Mayer*, 146 Fed. 155, based upon the dictum of Brewer, J., in giving the opinion of the court in *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, puts the act of Judge Pritchard beyond dispute. The order restraining inferior State courts from enforcing such an act is supported both as to power and practice

by a long line of decisions, ending in *Dobbins v. Los Angeles*, 195 U. S. 207, as to injunction, and *In re Lincoln*, 202 U. S. 178, as to habeas corpus. As Federal Judge Jones said in the Alabama case, the same influence attacks State and Federal courts. Policies would make States territories and war power law. Judge Ruffin's decision quoted above shows that Judge Pritchard was upholding not only the Federal Constitution, but also the constitution and *the law* of North Carolina.

As Webster said of nullification, resistance to the Federal court means war. And, if these acts are committed wantonly, no condemnation is too great for those guilty. And their authors proclaim them to be not only fruitless, but that they know an effective and harmless way to achieve the object at which they aim. "Governor Glenn," we read, "expressed the opinion that, *even though the penalty provisions of the act should be held unconstitutional*, offenders would be indictable at common law." But the penalty provisions alone make the statute void. And a rate-commission law was held in the Abilene case to close the courts on the basis of the common law. Why did not the State officers, before the passage of the act, resort to the common law, and, after the Massachusetts manner frame their issues in the State courts, get calendar preferences, the choice of numerous terms, parts, and judges, a sympathetic construction of the statute, so as, if possible, to save its constitutionality, and thus *force the corporation* either to comply with the statutory requirement or to *give to the public in the form of legal proof all the facts constituting their defence* instead of a merely technical bar of unconstitutionality? Then, as the Court decided in *Pennsylvania Railroad Co. v. Hughes*, 191 U. S. 477, the highest court of the State might administer the common law according to its own understanding and interpretation, without liability to review in the Federal Supreme Court, unless some right, title, immunity, or privilege, the creation of the Federal power, has been asserted or denied. Or, if a State statute has been passed, as in *Chicago, Milwaukee & St. Paul Railroad v. Minnesota*, 134 U. S. 418, "the construction put upon the statute by the Supreme Court of the State must be accepted by the Supreme Court of the United States for the purposes of the case as final, and not to be examined as to its propriety or accuracy." If the Executive of

North Carolina had proceeded in the State court under the common law or under the statute, and proved that the offence was punishable at common law or that the statute imposing a penalty was constitutional, then it might pretend to act under the warrant of the people and in defence of local self-government. Then there would be no conflict, no anarchy, no rebellion, in defence of so-called States' rights, but, as in Massachusetts, efficient regulation of corporations in the public interest by conciliation and by due process of law, and a government not of men, but of law.

The passing of a statute by a State legislature fixing a rate does not bring up the constitutionality of the statute until it is attempted to enforce the statute by imposing a penalty. A State may take private property for public use upon making just compensation or upon making provision for just compensation, and any statute may be put into immediate effect if ample provision may be and is made to preserve rights until it has been upheld. And, if the complainant proceeds in a State court, not invoking the penalty until after he has proved that the rate fixed affords just compensation, and that the penalty is itself justifiable, no Federal question is involved, and self-government by the State Legislative, Executive, and Judiciary is assured beyond the reach of *any* power to attack it. Vicarious punishment is not an aim of self-government, nor is retributive vengeance. The enactment of just penalties should not and does not change the principles of the common law; penalties merely contribute to make effective the requirements of the common law. The punishment of individuals for forestalling, engrossing, and regrating, would be an innovation only in the infliction. Corporate entities may be punished only by money penalties or forfeiture of rights, but this both punishes innocent stockholders and does not compensate the injured parties. Any money penalty that would be sufficiently felt by the corporation or would compensate the injured parties, as well as any forfeiture, would risk the peril of unconstitutionality and thus block due process of law. The penalty, however, is not necessary to a civil action for damages. Right of action itself is the most powerful, the most just, and in its result properly the most punitive remedy known to the law of corporations and commerce, by virtue of the door opened to constant pros-

ecution by one unfavorable final adjudication on the facts of an issue squarely presented. It was expressly decided, however, in the *Abilene* case that the existence of the Interstate Commerce Commission took the right to such a remedy away from the public, and that the finding in one case became, under the Interstate Commerce Law, not a rule for other complainants, but an "immunity bath" for the railroad. Not only is the remedy in the State court under common law of a just statute the best remedy, but it cannot be taken away. There will be no basis for removal to a Circuit Court before the final determination in the State court,* and the only Federal court to which a writ of error to the highest court of a State lies is the Supreme Court of the United States, which does not decide questions of fact, but leaves the common law determination of the fact of just compensation to the State court and to the country-side. If the highest State court determines the State statute to be unconstitutional, that determination cannot be reviewed.† Nor is the fact of just compensation reviewable, or if, owing to representations in the assignment of errors, the Supreme Court is led to a review, it will merely affirm the decision of the State court as a matter of course.‡ The only risk incurred by government by due process of law is delay,—a small consideration in view of the equal delay before the "commission with power," the great benefit sought, and the utter worthlessness of any other procedure than due process of law, whether by commission or otherwise. And the delay is really on the other side, for, whether "power" is assumed or the courts are appealed to, the *status quo* at the commencement of the action is strictly preserved from the moment of the application to the lowest court until, if proper, the final decision by the highest court, upon the principle that, if a man were to be hanged before a complete trial, it would be frivolous to try him afterward, but that to keep him safe during trial is no injustice. Under assumption of "power," the highest court is the Supreme

* *Pitts v. McGhee*, 172 U. S. 518; *Dobbins v. Los Angeles*, 195 U. S. 223; and *In re Lincoln*, 202 U. S. 178, above cited.

† *Rippey v. Texas*, 193 U. S. 504.

‡ *Williams v. Parker*, 188 U. S. 491, and other cases cited in Hannis Taylor's "Jurisdiction and Procedure of the United States Supreme Court," Sects. 227, 228.

Court of the United States: under due process of law, justice is already attained when the highest State court has spoken. For the misguided activity of the executives and legislatures, which has resulted in setting up an almost insurmountable barrier between the people and their courts, there should be substituted an equal or even greater activity in the provocation, promotion, and prosecution of suits on behalf of individuals and the public collectively through prosecuting officers or commissions. Without urging what ought to be axiomatic to every one, but is far from being so, that due process of law cannot be had at the hands of an executive officer or board, it may be insisted that an executive commission should not be both court and prosecutor. The importance of questions of trade, transportation, and commerce warrant the existence of special parts of court and special prosecutors in every State and in every Federal district. To make the court a prosecutor and a judge at the same time is to render both functions useless. To separate the two functions exercised by the "commission with power" is to endow each with the vitality which their fusion extinguished. Then a remedy may be offered, not only in and through every State, but in every county or judicial district, through every aggrieved person. Decentralization, self-government, and effectiveness can go no further under a written constitution.

But, as the policists are not content with the justice provided for by the Constitution, so are the reactionaries dissatisfied with the self-government which it permits. Their argument is found in "Federal Power over Carriers and Corporations" by Mr. E. Parmalee Prentice, published in January, 1907.

Mr. Prentice says:—

Very recently confidence in local government and jealousy for personal rights have given way to a popular movement for the extension of Federal jurisdiction. This tendency appears in many Federal statutes, most conspicuously in the Anti-trust Act, and in current proposals for trust regulation by means of license or compulsory Federal incorporation. Under the Constitution, the important personal rights of every individual, not residing in a territory or a colony, his personal liberty, family relations, and property rights, are *derived from the State, and not from Congress*. The proposed method of

trust regulation, then, which would take commercial jurisdiction from the States, where the powers of government are subject to established restrictions, *and vest it in Congress, free from these limitations*, is the establishment of a parliamentary despotism. The right to engage in foreign and interstate commerce, it is now said, is *derived solely from the Federal government*, and upon *this* ground the effort has been made to establish Federal control over all, save a few of the smallest, industrial and transportation interests of the country.

The foregoing argument rests upon false premises. In the first place the Anti-trust Act was really an enactment of the common law. The senators who caused its passage said so. It was enforced in the Northern Securities case brought by Attorney-General Knox for the Executive Department in the ordinary exercise of its powers and of its duties. The decision of the court was rested not upon the statute, but upon national sovereignty and the common law. The Anti-trust Act, therefore, placed no added restrictions upon the power of the States to protect or to control the right which they are, by Mr. Prentice, supposed to give of engaging in trade, but rather suggested to the States the proper basis of their power and the effective *method* for its exercise in the protection of the alleged right. And many States, including New York, have enacted and applied that method with success. What possible limitation can come to the right to engage in State trade by protection of the right to engage in interstate trade it is difficult to see.

Very recent experience, further, only confirms what was long abundantly demonstrated, that State *legislation*, under the so-called *jurisdiction* argued for by Mr. Prentice and based upon the theory set up by his argument, has practically nullified the people's power of regulating trade and public service by their local governments, and has caused repeated successful appeals by corporations to the jurisdiction of the Federal courts for the protection of the right to trade, and so extended federal and extinguished State jurisdiction. The right, moreover, to engage in trade, industry, or commerce, does not depend upon government, either State or National. Courts have said for centuries that neither government nor individuals may restrain lawful trade. Every man's lawful calling is protected as property.* It was never claimed that the

* Bradley, J., in *Slaughter House Cases*, 83 U. S. 36, p. 116.

United States government *gave* the *right* to engage in interstate commerce, nor is it true that the States give the *right* to engage in State commerce. Rights exist before constitutions; the written instrument does not create rights, but expresses and defines them, and so puts them beyond attack from the wicked or the unintelligent. Mr. Prentice himself says, at page 32,—

In *Gibbons v. Ogden*, 9 Wheat. 1, 211, the Supreme Court, speaking by Mr. Chief Justice Marshall, held that the right of intercourse between State and State was not granted by the Federal Constitution, but derives its source from those laws whose authority is acknowledged by civilized men throughout the world.

The fact really is that the governments, State and National, have power to *protect* the right to trade, which was adequately protected, against restraint, by the common law.

There has been no change in government. It is the individual who trades, and not government. But trade by individuals has assumed increasing proportions until it has become not only State trade, but interstate and even national trade. And individuals have adopted the convenient fiction of a gift from a single State of the *right* to trade, in order not only to engage in national trade, but primarily to prevent others from competing with them, both in the State and in the Nation. But the prevention of this wrong does not involve the assumption of any new or statutory power by the Nation. The common law, adequate to all, emerges, applying broad principles, as Chief Justice Shaw said in *Commonwealth v. Temple*, 14 Gray, 59, to changing conditions. The only national legislation needed is an amendment to Section 1 of the Judiciary Act of March 3, 1887, which shall provide:—

That the Circuit Courts of the United States shall not take cognizance of any suit of a civil nature, either at common law or in equity, between a corporation created or organized by or under the laws of any State and a citizen of any State in which such corporation, at the time the cause of action accrued, may have been carrying on any business authorized by the law creating it, except in cases arising under the patent or copyright laws, and in like cases in which said courts are authorized by this act to take original cognizance of suits be-

tween citizens of the same States; nor shall any suit between such a corporation and a citizen or citizens of a State in which it may be doing business be removed to any Circuit Court of the United States, except in like cases in which such removal is authorized by the foregoing provision in suits between citizens of the same State.

To this amendment, which was introduced in 1887, but not passed, there should be added this further provision:—

Nor shall the Circuit Courts of the United States take original cognizance of any suit of a civil nature, either at common law or in equity, in which a corporation shall be a party plaintiff unless such corporation shall have previously filed its certificate of incorporation in the office of the Department of Commerce and Labor; nor shall any suit in which a corporation may be a party defendant be removed to any Circuit Court of the United States unless such corporation shall have previously filed its certificate of incorporation as aforesaid.

Section 4 of the Judiciary Act of 1887 now makes banking associations established under the laws of the United States citizens of the States in which they are located and repeals Section 640 of the Revised Statutes providing for the removal of suits against corporations chartered by Congress. This section might be strengthened so as to apply this provision to corporations which have filed their certificates of incorporation at Washington. The Judiciary Act would then say to all corporations: If you desire to invoke the protection of the Constitution and the Federal laws, first render yourself amenable to the State courts and the State laws. Thus Federal statutes, State statutes, the Constitution, and the common law may all be enforced. Decentralization and self-government would thus be advanced and an adjustment made of jurisdiction of State and Federal courts, which has been for many years so distributed as to dispose the Federal courts to favor the extension of administrative power as a relief to overworked tribunals. This amendment would in great part reduce the necessity of administrative commissions, granting their propriety, and would add, but at last with even hand and in proper measure, to the work and to the usefulness, but not to the jurisdiction, of the Federal or State courts

in the protection of the simplest and most fundamental right of free society.

The common law, its application thus distributed, always retains as the basis of application for the rules of law of all jurisdictions, State and Federal, this essential, which the new methods either depreciate or absolutely lack,—a thing indispensable to justice, indeed its very body and foundation, a characteristic which Sir Henry Maine said was its chief virtue, —*respect for facts*. The application to ever-changing combinations of fact of the old principles is all there is to the law of trade, and this application can be made only by the courts. As the expression of the substantive law in these matters is not only supererogatory, but even narrows the rule of law, no addition can be made by statute to the power of Congress. The few limitations upon Congress adverted to by Mr. Prentice are precisely those which guarantee the right to life, liberty, and property, and due process of law. And they had always been applied to the nation under the Fifth Amendment, and were supposed not to be applicable to the States by the Federal courts before the adoption of the Fourteenth Amendment, despite their being expressed in State Constitutions. And they are adequate to protect the right of all to engage in interstate commerce. The application of this protection can be made not by Congress, but only by the courts. The acme of Congressional usefulness is reached in the distribution by it of the jurisdiction of Federal courts in such a way that *judicial power* shall be not only a rod in the hands of the innocent to smite the wicked, but also a shield to the innocent and a stumbling-block to the wicked instead of the reverse as it now is.

This protection extends, therefore, not through the medium of Congressional legislation, but actually against Congress, and, in the same manner, directly through the courts, against such corporations, as, for a possible example, the Standard Oil Company, working under illegal contracts in restraint of trade. The requirement by Congress that a corporation, as a condition to the exercise of its undoubted right to engage in interstate commerce, file the terms of its contract of incorporation, does not limit its right, but protects the right of all against contracts in restraint of trade now latent in the charters of large corporations under the guise of power to purchase and

hold stock in corporations incorporated in different States under the theory of "gift from the State." The existence of these dummy corporations serves no purpose but that of restraining trade in the national field under permission of State laws to make a State-wide restraint in each State. Any other purpose would be attained, so far as the right to trade is concerned, by consolidation into one corporation and dissolution of the former corporate elements. The taking of a national license makes the "gift from the State" theory appear what it really is, an empty pretence for immunity from national laws punishing restraint of interstate commerce. Competitors are bought out for more than their business is worth on condition that they take pay in stock and join with the trust in getting the excessive prices out of the public. The purchase is thus a conspiracy in restraint of trade and against public policy, and would never, if exposed in its true nature, be enforced in any court but would be declared absolutely void.

The penalty for failure to file attaches automatically, as in the States, where this act alone is required as a total of restraint upon freedom of incorporation, and the requirement by the Federal government involves only the ineligibility of the corporation to sue in the Federal courts. This requirement would also enable State and National governments to regulate the real corporate entity by bringing it into courts in its entirety instead of, as now, piece-meal in its subordinate State corporation dummies,—into the State court or the Federal court. It would also prevent, by rendering it necessary to every corporation which might desire to maintain a *persona standi* in court to demonstrate its independent existence as a responsible corporation controlled by its directors, the artificial limitation of liability gratuitously engrafted upon the law of corporations, and the many frauds perpetrated in the internal management of corporations, especially "absorption" and "freeze-out," by juggling with subsidiary entities free from the responsibilities properly attaching to individual directors of corporations. It would terminate, as an American institution, the holding corporation, the giant parasite that feeds through its suckers in every State upon the host of national industry, strangling where it cannot devour, inoculating the arteries of commerce with the virus of its own vitality, stopping them except as

tributaries to its own functions, and gauging their supply to its capacity. To kill the host is, indeed, one way to destroy the parasite; to cut off its nutrition by enabling the victim to struggle for himself is another. The one sacrifices well-being, the other promotes health; the one roots up the wheat with the tares, the other allows the tares to wither and the wheat to grow. Law cannot become outlawry, or itself do, as the politicians advise, what it would punish giant corporations for doing, but it may remove from outlaws and outlawry the protection of law they have so long enjoyed above that given not only to individuals and to small corporations but to *bona fide* large corporations. To be themselves protected in the exercise of their right to engage in trade, they must then bring themselves within the pale of law and justice. Lawful consolidation is not only not restricted but is protected and facilitated.

The act of filing would thus be the act of the corporation for its own benefit, just as it now is in the State. Nor is there any diminution of the power of the States to require the same performance in every respect that is required by Congress. The opposite is true in that the jurisdiction of the State courts over corporations would, as has already been suggested, be returned automatically by the replacing of the fiction upon which Federal courts now base their jurisdiction, that a State corporation is a foreign corporation in every State but one, its stockholders all being held to be citizens of that State, by the truth applied now, by the cases and by the Judiciary Act, to corporations existing as one entity in a national sense, that they have a legal existence in every one of the United States in which they are found.* The States may make this requirement now, not only of corporations formed in other States, but of railroad and other corporations chartered by Congress.† They require no more of the domestic corporation as such. The uniform rule, moreover, which has been applied by the Supreme Court of the United States is that what is property in a State, whatever its kind, may be taxed and controlled by the State.‡ The decisions to that effect are purely Con-

* *Eby v. Northern Pacific R.R. Co.*, 13 Phil. 144; Judiciary Act of 1887, Section 4; see whole subject reviewed in *Shaw v. Quincy Mining Co.*, 145 U. S. 444.

† *Insurance Co. v. Prewitt*, 202 U. S. 246.

‡ See this rule stated by Holmes, J., in *Kidd v. Alabama*, 188 U. S. 730.

stitutional in the sense that they do not depend upon any state of facts or of law that Congress can change. A requirement by Congress that issues of stock or bonds capitalizing franchises derived from the national government be first passed upon by a commission, subject to mandamus by the courts, would not conflict with the same requirement, upon similar premises, in a State. The franchises regulated are special franchises and are property.* Full power is therefore left to the States, without added national restraint, to prevent overcapitalization being made the basis of a claim for profits on capital not used and a justification, under alleged Constitutional protection, of unreasonable rates, and to prevent the franchise to use public property being capitalized for that purpose against the public. A new power, also, is given, to consider, stripped of the veil of fallacy woven by the complexus of private, special, and local statutes, the gifts of the public property of cities and of the State by public officers and representatives in their true light of gifts to individuals for their private enrichment through taxation of the public using them. Such a rule by Congress as to franchises simply would not apply to the States and would not be prescribed. And the requirement of filing the certificate would not apply to individuals nor to all corporations, but only to those which might desire to bring actions as plaintiffs in the Federal courts or to remove them there as defendants. The foreign holding-corporation parasites of public service would be made as amenable to local regulation as the dummy operating company, and it would be possible to learn at Washington in whose hands are our local public utilities. The net result would be more light, more truth, more justice, a fairer and more open field not only for individual effort but also for lawful combinations, more uniformity, more order, more national unity, more effective regulation, and more self-government.

Thus the system of control by the "commission without power" and by the common law not only presses into service all the benefits of government by law under a written constitution, but actually resolves the conflict between the Nation and the States in the exercise of their respective powers of sovereignty and of self-government.

* *Metropolitan Street Ry. Co. v. Commissioners*, 199 U. S. 1.

The requirement of a national license is but the enactment of a statute adjective to the two common law principles,—a contract of incorporation is a public contract, and *sic utere tuo ut alienum non laedas*, or you must so use your own that it may not injure another's. The statute merely aids the courts in the prevention of restraint of trade and the enforcement of the common law duties of public service corporations by bringing the real parties before them in the proper jurisdiction upon the real facts. If it would not be Constitutional, then neither would the Constitution itself, in that section which gives to Congress the power to ordain and establish inferior Federal Courts and, as an inevitable consequence, to define their jurisdiction, be constitutional; and there would be small hope for any other measure. Corporations and trade have grown up to national size, and *it is the facts that demand* that these principles, uniform in themselves, be applied distributively, with reference to the right violated, nationally as well as locally. The enactment of any requirement may be by Congress, but the enforcement can only be by the courts, State and Federal, and, as James C. Carter said,* in the vast though unnoted proportion of cases, the law as developed through the inherent nature of things and expressed from time to time in the decisions of the courts,† as distinguished from arbitrary statutory enactments, executes and enforces itself. A little thought will show that private "policies" not only retard the free development of industry, but also arrest absolutely the powerful, unremittent, and all-pervading force of self-adjustment; and, as the State regulation of commerce under the Confederation prevented the development of interstate commerce, so "reaction" and private State "policies" combine with national "policies" to prevent the development of national self-adjustment and uniform due process of law.

The advocacy of a Federal license by the policists has put upon that plan an odium which should attach only to them personally. Little that they have advocated in the name of progress but has been used as the basis of arbitrary power

* The Ideal and the Actual in the Law, p. 27.

† See this principle stated in *Kansas v. Colorado*, 206 U. S. 46, explaining the development of an interstate common law.

and the exercise of the functions of all three departments by the Executive. Thus the national policists have so applied the Immigration Act that the Executive, in the exercise of its political power, may summarily arrest and banish forever without a trial any person in the United States.* This is but one of many examples of important rights taken away without due process of law. The preoccupation of the public with private affairs and its unthinking passion for accomplishment have caused the legislature to go a long way toward a complete transfer of all the powers of government to the Executive. And it must in candor be said that courts have too often joined with the public in its indifference to this transfer. The fact, therefore, that the policists demand a positive disobedience to the Constitution,—*i.e.*, the violation of rights protected by the Constitution,—and the reactionaries a negative compliance with its principles and a failure to protect rights guaranteed by it, will not deter any clear-thinking man from condemning both, and demanding as against them a positive enforcement of all Constitutional provisions. What men who break the Constitution would try to do under a simple license statute is unimportant if only we assume that the Constitution is to be enforced.

The policists and the reactionaries both argue for a system which destroys the entire force of popular government in the matter of control of corporations and commerce by delegating all legislative power to impotent commissions and by putting out of operation thousands of courts of common law—the power of the country-side and the bulwark of free government—and giving nothing in their place. They are not radicals or socialists, but, to the extent of their policies, are unconsciously introducing the wedge of anarchy. They aim to destroy the judiciary, the appellate as well as the inferior courts, for jurisdiction over a *corpus* lost to the lower court is lost for the higher. When there is no jurisdiction, there is no judicial power; when there is no judicial power, there is no Constitution, but the will of the administration, no law, but the caprice of despots. Legislation itself cannot then be enforced and is no check on the Executive. Ours is a government of three great departments. With any department destroyed,

* *U. S. v. Sing Tuck*, 194 U. S. 161; *U. S. v. Ju Toy*, 198 *id.* 160.

the remaining departments cease to be parts of the government established by the Constitution of the United States. A government composed of an irresponsible legislative and executive would result in either anarchy for industry or tyranny for government, and perhaps in both. Legislative power under the government established by the Constitution was limited by the terms of that instrument, and it was not only not contemplated that legislation should be passed and executive power exercised thereunder beyond the limits set up in the Constitution, but it was provided that such legislation should not be given effect, but should be void *ab initio*. To this end the judiciary was established. Judicial power under the Constitution is as broad as the limits of power which it may be attempted to exercise under the Constitution.* To destroy judicial power is revolution. James Stuart aimed to destroy the judicial power with his High Commission; George III., with his Writs of Assistance; the Kentucky and Virginia nullifiers of 1798, with their proposal in 1802 to abolish the inferior Federal courts; the nullifiers of 1832, with a threat of secession; those of 1860, with actual secession; and the policists now have the same purpose in their "commissions with power." The Stuarts were held to the Constitution by Sir Edward Coke; George III., by the men awakened by James Otis; the nullifiers of 1802, by Gouverneur Morris; the nullifiers of 1832, by Daniel Webster and Andrew Jackson; those of 1860, by Abraham Lincoln and the Civil War; and we may appeal to the policists and reactionaries of 1907 in the eloquent words of Gouverneur Morris, one of the signers and the one who made the final draft of the Constitution, "than whom," said Theodore Roosevelt, his biographer, "there has never been an American statesman of keener intellect or more brilliant genius."

The judicial power [he says], that fortress of the Constitution, is about to be overturned. But do not be deceived. Do not rely on that popular will which has brought you frail beings into political existence. That opinion is but a changeable thing. It will change soon. This very measure will change it, and you *will* be deceived. Do not, I beseech you, in reliance on a foundation so frail, commit the dignity, the harmony, the

* *Kansas v. Colorado*, 206 U. S. 46.

existence, of our nation to the wild wind. Trust not your treasure to the waves. Throw not your compass and your chart into the ocean. Do not believe that its billows will waft you into port. Cast not away the only anchor of our safety. I know the difficulties through which it was obtained, and I declare to you that, if you lose this charter, you will never, no, never, will you get another. We are now perhaps arrived at the parting point. Here, even here we stand on the brink of fate. Pause,—pause,—for Heaven's sake pause!

The bark of liberty having weathered so many storms, we may well have hope for the future. We cannot, it is true, predict when the people will be satisfied to support only men who direct the power of popular government within the limits of Constitutional warrant and with skill, industry, and purpose demonstrative only in the result, avoiding positiveness that is really negation and advance to be followed by greater retrogression. But we can prophesy that, while the nation lasts, and until government of the people, by the people, and for the people shall perish from the earth, the Constitution and the judiciary will be working in the old way, selecting from enactments for enforcement that which is law, and allowing progress only where it cannot be challenged by reaction, when policists and reactionaries, and the new theories of quick, privileged administration of justice, have been long relegated to the company of their predecessors in the museum of vices thrown off by vigorous democracy in its hardy growth toward the ultimate success of free republican government.

DISCUSSION.

DR. RUSSELL.—Mr. Hendrick is so learned and fortified with such abundant adjudications and citations from the United States Supreme Court that scarcely any one would dare to attack him, in here at least, at this late hour. I will have to differ from him on one point. He says it is too late for discussion after a man has been hanged. Most lawyers will remember the case of Milligan, a celebrated case which involved our liberties as citizens under the Constitution. In that case the question was, "Can the judicial power to hang a man be given away to a military commission which is not a judicial body?" It was decided that Milligan was all right in his contention, and absolutely immune to hostile condemnation. The only trouble with Milligan was that he had been already

executed. [Laughter.] And that had occurred years before the United States Supreme Court reached its decision. [Renewed laughter.]

Nothing except the lateness of the hour prevents me from calling on one of my friends, one of the most distinguished citizens, I will not say of Buffalo, but of the State of New York. When I heard Mr. Hendrick's pathetic reference to the chain gang down there in the Southland, and their awful and dreadful tribulations, and remembered that they were just sellers of railroad tickets and ordinary scalpers, I couldn't help but think of Tracy C. Becker, whom we regard down in Broadway, New York, as the greatest living exponent of the law as to the salability of a railroad ticket. [Applause and laughter.]

I would like to hear a word from him on that or any other topic.

MR. TRACY C. BECKER, of Buffalo.—Mr. Chairman, after such a eulogy you will excuse me if I decline to stand for the glowing things you have been so good as to say of me. But I will endeavor to say a word in discussion of Mr. Hendrick's paper. I did not expect to have anything to say upon this subject when I read the title of Mr. Hendrick's paper, but since I have heard him this evening, and on learning of his great activity of mind and speech, I feel as if a word ought to be said to the people here, not to the lawyers who already know all about it. And my proposition is that nothing that the legislature can do, nothing that Congress can do, can take away from the courts the right of review. I cannot quite see that Mr. Hendrick is fair in leading anybody to think to the contrary. It does not make any difference whether the legislature sees fit to prescribe a rate at which railroads shall carry our property or our persons within this State or whether they delegate it to a commission to do so, the courts can review it. They will review it, and they will determine whether it is reasonable or not. I did not quite like his story about the Chinaman being banished by executive order. If my friend Hendrick had been fast enough, he would have got a habeas corpus out of any court, State or National, and his man's rights would have been protected. Surely, law reigns, and will continue to reign. This question of commissions and the delegation of powers is a practical question. It is not a question as to what we would like to do. Heaven knows we would like to have biennial sessions of the legislature, or triennial or septennial, and let them fix these rates, if they could spend the time to do it. But can they? Do they know enough? Imagine the legislature of the State of New York passing on that question, as we know it in our own State, and imagine Congress attempting it. It is the innate and inherent difficulty in legislatures exercising these powers that has required and finally brought about the delegation of them, to endeavor to fix rates. Well, what is done now? Take the bill passed in 1906, that is now in force, amending the Interstate Commerce Act. The railroads have to file their rates. If complaint is made to the Interstate Commerce Commission or if the Interstate Commerce Commission on its own motion chooses to change the rates, they are changed, and the railroads for the time being must obey the rate that the commission fixes. But they can appeal to the courts. They are not deprived of their right of review. A corporation

cannot be held up any more than the poor citizen with the three sous who tries to get through the State courts and up into the United States courts to get an adjudication on his rights. [Applause.] It was a very singular thing, I thought, in Mr. Hendrick's paper, that he spoke about the poor citizen with the three sous, and the company having to pay thousands of francs; but he didn't tell how many thousand francs the poor citizen with the three sous had to pay. It struck me as a singular omission. If he didn't pay it, somebody else did. This is a public question. An act passed or a regulation made by the Interstate Commerce Commission can be enforced by the Attorney-General. Who pays for it? Don't you and I pay for it when we pay the taxes that pay the Attorney-General's salary? That is the way it ought to be, it seems to me, and that is what Congress does, and the State legislature, in creating the Public Utilities Commission; and it does not seem to me that there should be any great anxiety on anybody's mind to keep him awake nights or prevent him from eating breakfast in the morning, if he holds some railroad stock or a few bonds, as to what will be the result of this thing. It is an experiment. We recognize it. We have tried the experiment of giving the Interstate Commerce Commission these powers which my friend says are teeth that do not bite, because they could not enforce their own orders, could not make an order that was good for anything, that even the courts would enforce. Now we are going to try the other experiment for a little while, to see how that will work, and give them some powers that can be exercised, temporarily at least, and that the railroads cannot hold up by injunction order and so prevent their exercise until the poor plaintiff is dragged through the courts, as some of our poor people in Buffalo have been in endeavoring to get their rights, or which at least will be good until the courts have passed upon the question, which may not be long, but will be long enough for practical purposes.

The remedy that my friend advanced is very interesting, but it strikes me it might possibly be unconstitutional; and, if I recollect aright, when the amendment he suggests was proposed in 1887, there was some discussion to that effect, and that was one of the reasons probably that led to its not being adopted at that time. At least that was the thought expressed, as to whether you could say to one class of citizens who happened to be incorporated, "You cannot go into the courts unless you do so and so," and leaves it free to say to all the other citizens, and say to them, "You may take the removal of your cause into the United States courts if you see fit to do so." That would hardly be according to the policy which our Constitution guarantees, or with due respect to the other inalienable rights which my friend Mr. Hendrick thinks, are being assailed and destroyed at present through legislation.

These are a few little points that occurred to me, in passing, as Mr. Hendrick was reading his paper. I do not want to sit here in this house before my friends and fellow-citizens, and allow any man to get up here and tell us that there is going to be a great detriment to the public because this experiment is going to be tried, for it is not so. It is a good experiment. [Applause.]

MR. CHARLES B. MATTHEWS, of Buffalo.—I was just going to ask the speaker if it didn't occur to him, after all these experiments had been tried and fussed with, that it might be well to try public ownership.

DR. RUSSELL.—Will you please state that again? I would like to hear it, and have Mr. Hendrick answer it.

MR. MATTHEWS.—I thought of the same things that my friend Mr. Becker did when the speaker so fluently and finely spoke about how easy it was for the citizen to protect his rights in the courts and bring his action. Of course, I know, and the distinguished judge who addressed us this evening knows, that a great many years ago, when I was a young man, I brought action; and, before that was terminated, my hair was gone [laughter], and, when I got through, I was so depleted I never wanted to speak of the experience. [Laughter.] But there is this that seems plain to my mind,—that we are trying to do the impossible, and I am very thankful for the efforts that President Roosevelt has put forth. He has accomplished much good. The thing runs back to this, that nearly all the troubles resulting in the destruction of individual effort, in building up cruel and greedy combinations, are traceable to this root of transportation which has occupied the attention of courts and legislatures, and it is going to do it right on and on until the people know enough to mind their own business. The business of the public is, and always has been, to provide highways for itself. As to what a legal and proper rate is, who can tell? No one short of the Infinite and Eternal can tell what would be a legal and proper rate for a railroad. Take, for instance, the Duluth & South Shore Railroad in Northern Michigan, built by the appropriation of State lands and State subsidies and bonded and capitalized for over \$75,000 a mile, when it did not cost \$40,000,—it didn't cost \$30,000. Every now and then people begin to talk about proper rates for transportation of men and property, and then that loud cry goes up, "O Lord, have mercy on the innocent stockholder!" Who is the innocent stockholder? Where is the innocent stockholder? Haven't the people eyes to see and ears to hear? Haven't they seen these things over and over and over again? And if anybody goes and buys stocks under these conditions, and that class of stocks, too, why, he cannot come in afterward and claim innocence.

Then, in regard to this commission business, here in the city of Buffalo, if we were aggrieved so that we could scarcely drag ourselves up and down the streets by reason of the burdens imposed upon us by the exactions of a street-car company, we could not lay one rod of track in our streets to relieve those burdens without going to some commission away off at Albany. And who made that commission? Some governor. Who made the governor? Who made the governor of Pennsylvania? The railroads and those corporation interests.

Now, in regard to the control of this thing, look at Pennsylvania. You know, Mr. Chairman, perfectly well how a great and important clause was put into the fundamental law of the State of Pennsylvania. The people had grievous burdens to bear, were imposed upon terribly, and they went and had a constitutional convention, and it was put into the fundamental law that no transportation company should have any interest whatever,

even a leasehold interest, in any mining or manufacturing company. What happened? The next day the Lehigh Valley Railroad and the Lackawanna and the Pennsylvania and the various railroads that thread the State came in and organized coal and mining companies under which they have carried on and perfected the very flower of monopoly.

A few days ago a young man came into my office, and wanted to give me some rates to ship goods by water up to Lake Superior. He told me the rate, and I said to him: "This is somewhat strange. You have raised the rate a good deal from what it was last year. Now I was up north a little while ago, up to Hancock and Houghton and that country. In the winter they had copious snows, and in the spring plenty of rain, and there is lots of water in all these lakes. There is water enough to float the boats. It doesn't cost you anything, and I hear continually boasting about the large cargoes that are carried and the economy of transportation, how much more cheaply you can carry goods and passengers than you could three years ago. Now you come here with an added price from former years. You have raised it one-third in the last five years." "Well, now," he said, "I will tell you, Mr. Matthews, it is like this. You know that the railroad company owns our steamboat line, and they own all the lines here, and we cannot charge for carrying freight across the water here just what it costs us to carry it, and you know our service is good, our service is fully as quick as that of the railroads." "Yes," I said, "I know that. The railroads side-track my goods forever and forever until they nearly drive the life out of me, and I know, when I put anything on a boat, that it is going through." Then he said, "Well, if we did place these charges at the cost of transportation, the railroad companies wouldn't get any business." I said: "Well, now, that is a frank statement. Of course, I know that your masters who send you out into the street to get business wouldn't say what you have said, but it is all right, you are an honest man, you have told me the truth"; and I further remarked to him, "We are in a predicament here in and about Buffalo: there is not a single public dock that any ship can come in to and land anywhere about Buffalo, not one." It is a fact that you cannot load a pound of freight, except by permission of the railroads. Then they say that they have got to keep water rates high enough so that the railroads can make some money, and we poor creatures here in Buffalo have gone around and put flags up on our school-houses and told about how smart and progressive we were and boasted about our city, when we have denied ourselves the right of the use of the waters that the Almighty has provided for our benefit.

Now I do not wish to prolong this session. There are so many things that come to a man that has had a little experience in some of these things that he wants to talk about three weeks when he hasn't three minutes. But in regard to rates I would like to say just this one word.

A few years ago I was in Denver, and they had the same difficulty out there, before State Commissioners, that was being discussed here before the Interstate Commerce Commissioners. A lot of the refiners brought suit because the rates on their goods were raised from thirty cents a barrel to sixty-six cents a barrel to the seaboard. They said it was excessive.

The Interstate Commerce Commissioners called us up one by one, and asked us all these questions about the cost of the manufacture of our goods, the cost of labor, and the cost of everything connected with the industry, and, if we could prove that we could operate our plants, the rate was reasonable, but, if the rates were so high that we couldn't operate our plants, it was unreasonable. I found the same thing in Denver. The State Commission there was struggling over this question, because they had compelled the miners to give the government a word about the ores that they transported. If the ore was lean and the operator could not work his mine and had to shut down, the rate was too high. But, if he had good fat ore and could pay the rate, the rate was reasonable. All of that means that the transportation companies have conspired together to take the fat of the land, the profits; and, to get at this thing reasonably and well and easily, we should do what they did in Germany. They went in and bought the stock of a railroad and began to operate it at the cost of the transportation of men and goods, and the water-logged companies came one after another and got on their knees, begging that their railroads be taken, because they could not live on that kind of competition, until one after another was bought; and they now have a just and honest system of transportation. When we get to that common-sense regulation of rates and minding our own business, we shall have prosperity such as the humble and common people can live by, and the ordinary man won't be dragged down and compelled to go to seek service and employment of a corporation that every sense of justice and humanity compels him to loathe and despise. [Applause.]

MR. HENDRICK.—It is evident that some parts of my paper were not understood. My answers will be categorical.

In the first place the last speaker suggests that very often you cannot tell what rate is reasonable. Now the only thing to do in such a case is so to arrange the law as to let the man who thinks he has got the worst of the bargain, if he is keen enough to see that the rate is not reasonable, go to the court. If either the individual or the commission can show the court that the rate is unreasonable, the court will award damages. If the court cannot see that the rate is unreasonable, the commission cannot. Under the present law few can come before either the commission or the court.

The first speaker from the floor said that the courts can review. Of course, they can. I do not deny that; but what I say is that, when they review, and you give, by statute, power to the commission to fix a rate, they do not review the facts, but only the constitutionality of the act. The power not only does no good, but we do not get the regulation. I have not spoken to you as a destructive critic, but as a constructive critic, and I have spared no pains to find out about this question. Before you can construct, you have to point out the evil. I criticise no person. The question we have been discussing is exceeded in importance by none, and, if one cannot make it plain without hitting somebody inferentially, it cannot be expected that facts shall be obscured.

As to my assertion that a commission with power does not regulate, it does not do anything. It does not bring the courts in. The courts in

reviewing just say, "You have done nothing: you have simply acted under an unconstitutional statute." Some years ago, in studying the experience of the Massachusetts Commission, I was impressed with that important fact. When the eighty-cent gas case came up in the Circuit Court before Judge Lacombe, I took the occasion to verify it in the ten thousand printed pages of the record before the Master. I digested and wrote an index for all those ten thousand pages. The eighty-cent rate had been fixed by a commission with power, and the legislature about a month afterward, after the commission had been enjoined, enacted the statute. The companies went to the Federal courts, and they are there yet, and as yet we have not got eighty-cent gas. In these ten thousand pages it was shown that the State officers were unready; that they had not prepared a case, which is always so with a commission with power. About two thousand pages of testimony, at a conservative estimate, that I waded through, had the purpose of proving that in the Massachusetts cities, Boston, Springfield, and Cambridge, among others, where they have a smaller population, less density, less advantages with coal, etc., and less advantages for distribution, they got their gas at a lower rate, and that they had no commission with power. I proved that to you by the figures in my paper. But Judge Lacombe had previously held that it would be unnecessary and useless to prove that the eighty-cent rate was confiscatory, as the statute was technically unconstitutional. Therefore, it is a question of whether you are going to do as a New York politician is supposed to have advised; namely, to give the people what they want, and make it unconstitutional. By this method are obtained both a campaign fund and a popular cry. But the public gets nothing. It is against a continuance of these methods that my voice is raised.

Now, as to the habeas corpus, I did apply for the writ. I went to one judge and he said, "I do not know whether I have the power to issue a writ of habeas corpus, but I will give you an order to show cause why a writ should not issue!" I went to another judge. He said: "If I do not issue that writ of habeas corpus, I can be impeached. But it won't do you any good. The act gives exclusive power to the executive, and in the Ju Toy case the Supreme Court upheld the act." An American citizen, Mr. Ju Toy, was born in Arizona, and had resided there for more than twenty-one years. The executive board of inquiry found that he was not an American citizen. Now one American citizen is as good as another under the Fourteenth Amendment, and we have it guaranteed that every citizen may prove any facts, upon which a right is based, in court. Aliens have the same guarantee under treaties. But every court in the United States will tell you that, if the administrative tribunal says you are an alien subject to deportation, an executive officer can arrest you on a warrant, as they did with my clients. And it was shown in the Ju Toy case that the trifling fact of American citizenship will not help you. Now I am talking facts, Mr. Becker.

MR. ROLAND S. CRANDALL, of Buffalo.—But Ju Toy had due process of law.

MR. HENDRICK.—He had due process of law by the executive, but the

administrative department deported him as an alien who had no rights. It was proved that he was a citizen, but the Supreme Court stood behind that executive order. And it is done in a great many cases involving other rights. If the arbitrary will of the executive is due process of law, what refinement of tyranny is reserved for despotism?

Now, as to the cost to this man who insists upon getting his rights as the man did to whom I referred, who sued for three sous. We have too few citizens of that sort in New York. Yet many actions of this kind were brought in New York County upon the refusal of passengers to tolerate the inconvenience created by disobedience by street railways of the "car ahead" and transfer ordinances. Many lawyers were found to take those cases, and they were brought in such large numbers as to pay very acceptably. The man got all his costs back in France: he gets them in New York City, with punitive damages besides. He gets in costs more than he pays out. As a matter of fact, many reputable lawyers take such cases from a sense of duty. That is what the commission without power is for. It is the representative of the right of individuals to go to court. To assert this right of the public for the public at the public expense is a legitimate use of public taxes. What I say is, have a commission, as in Massachusetts, or as we may prove to have in New York now, that will go to court for each and for all. You cannot go to the courts if you have a commission with power, and, it being necessary to appear before such a commission as a court to prepare a case for the real courts, it is impracticable for one commission to sit first as a court and then to prosecute as attorney in more than a few cases. The country is too large, and transactions too numerous, and only a few can get before the commission with power, not to speak of the court. A commission with power can hold only one court: the commission without power can hire numerous lawyers.

Now as to the reason this amendment to the Judiciary Act, giving only that right to corporations to sue in Federal courts which is given to individuals, was dropped. The reason was that the corporations did not want it, and Alfred Russell, while president of the American Bar Association, wrote two articles to show that it was dropped through the infidelity to public duty of certain senators. They put into Section 4 of the Judiciary Act of March 3, 1887, a provision giving to the Circuit Court's cognizance of suits in favor of assignees, against corporations as parties, upon their obligations passing by delivery. This permitted corporations to remove actions to the Federal courts where individuals could not. The other amendment had of course to be dropped, to attain this purpose. Mr. Russell showed, in 7 Harvard Law Review, that the action was not taken upon constitutional grounds, but was not only unstatesmanlike, but dishonorable.

That is all time permits me to say. All the objections from the floor were, I had thought, really answered in advance in my paper. [Applause.]

DR. RUSSELL.—Now the Court of Appeals always takes the papers, and reserves its decision. You do just that, and come here with Mr. Littleton to-morrow at ten o'clock and fifteen minutes.

[Friday Morning, September 13, 1907.]

DR. ISAAC FRANKLIN RUSSELL called the session to order at 10.30 o'clock.

DR. RUSSELL.—No one can be more embarrassed than I am. I do not know whether I look it or not, but I am, for various reasons. In justice to myself I must take the time necessary to make myself straight with the audiences of Buffalo that have come out in such generous numbers to the various sessions of our Association. Mr. Martin W. Littleton is a very busy man. He is not sitting up all night as chief counsel in the Thaw murder case, as the successor of that great man Delmas from San Francisco, whose place he has taken for a splendid fee, but he is engaged in defending Mr. Ahearn, the borough president of Manhattan, in a matter before the governor of this State, and you will understand that the removal of a borough president in the city of New York is a matter of colossal importance, and a proceeding before the governor is business so imperative that we do not feel that we have the right to ask Mr. Littleton to forego it or to disturb the order of the State or the engagements of Governor Hughes by any insistency or urgency on our part. Yesterday afternoon I heard from Mr. Littleton on the long distance telephone between Wall Street, New York, and the Hotel Lenox, and he told me that he would certainly be here. I received two telegrams from him to the same effect. Now you will bear me witness that in a long programme this is the only instance this year of a speaker who has been promised who has not yet appeared, and I will say that we expect that every person whose name is on the programme for this evening and for to-morrow will be here *in propria persona*.

Another reason why I am going to read this paper myself is that Mr. Littleton's eminence as an orator is such—you will remember that he nominated Judge Parker for President of the United States at the last national convention—that all the newspapers have asked for his speech in full, and I have furnished it to all the press between New York City and Niagara Falls, and it has been standing in type for one or two days. Now what is to be done with reference to these great newspapers? Obviously, I must release this matter and undertake to read the paper myself. I am sorry for those who have never looked upon the magnificent and Jove-like front of Mr. Littleton himself, who is a superb and splendid speaker, and some time, when he comes to Buffalo, you must make any possible sacrifice to hear him.

Another reason why I do not wait longer for a gentleman so distinguished is that our generous hosts have provided a special excursion to Niagara Falls, and the President's private car is waiting on the side-track, and will block all travel in Buffalo till it starts, and we simply must start at half-past eleven.

Now I have taken all this time to say just these few things in order that we may escape criticism for not waiting longer for Mr. Littleton or for presenting anybody at all in the place of Mr. Littleton.

Mr. Littleton's paper was then read by the Secretary.

3. THE DRIFT OF EVENTS.

BY MARTIN W. LITTLETON.

In the development of a little more than a hundred years we have passed from a moral revolution to national and international materialism. We have gone through the periods of revolutionary patriotism, constitutional construction, administrative limitation, and moral expansion, and have reached the period in which man's desire for material wealth is the supreme motive of our race.

If the first Americans fought and wrought for freedom, it was done under the strongest impulse of religious and civil liberty. If they gave power to the State and nation grudgingly, it was because the recollection of its abuse was fresh in their minds. If they were forced by irresistible events to form a more perfect union under the Constitution, they did it with much care to avoid making that union too powerful. If, year by year, they added interpretation and positive legislation to the powers of the general government, they did it under the whip and spur of a development which they could not control. If they set free the enslaved negroes and almost destroyed the Union in doing this, they did it under the gathering and increasing force of a moral revolt which became timely and inevitable on account of the admission of new States to the Union.

Whatever doubt existed as to the growing power of the Union as a nation disappeared when it was seen how far the government had gone in the assertion of its authority in carrying on and concluding the war between the States. After the issues of the war were set definitely at rest and the country turned its attention to material development, we gradually took on, as a whole nation, the ambitions and appetites of people intent upon growing rich. Throughout all the years of our history the work of bringing forth our great resources had gone on, desultory and uncertain at first, arrested and neglected at times, but always gaining each year and drafting into its great army more and more the men of ability, industry, and enterprise. In factories and on farms, in forests and on

the frontier, using crudely but resolutely the readiest means fit for progress, the material thrift of the race set to work to turn all of Nature's limitless stores into a fund upon which it might draw at will. This steady, growing, insistent force, driven by the most natural and powerful of human impulses,—that is, the desire for gain,—gradually grew up beneath every other question, and pushed them out of the way of its development. It began in New England and travelled toward the Mississippi Valley; and, although retarded by the slavery in the South, it took strong hold there after the war. Now it reaches the remotest corners of the country, and stimulates the energy of our people, native and foreign born. It is simply and plainly an irrepressible desire to get wealth. As a result of this almost universal desire and as the outcome of experiment and years of evolution, many industries of the country have come under the absolute control of little groups of men, who have managed finally to make a complete conquest in their particular field of activity. In order to gain this perfect control, it was necessary to go through many costly experiments, many periods of loss and disaster, and much risk and adventure. At various points in the growth of these industries, bankruptcy overtook the men engaged in them, and nothing is left to tell the story of their ruin. The natural effect of such a prolonged contest was the injury to, if not the destruction of, others engaged in like business, who were not strong enough to survive the struggle. Finally, if not the fittest, at least the strongest, survived, and held without dispute certain industries. Finding themselves without serious rivalry in their especial lines, they applied the shrewdest kind of economy in management, the boldest kind of courage in extension, the keenest kind of trade instinct in driving bargains, and to these added the most natural kind of appetite for gain.

These industrial concerns reached out in every direction for allies in order to strengthen themselves. They took great pains to watch the public affairs, in order to make taxation light and to obtain any favors which the government could bestow. They sought and secured alliance with railroads for the purpose of getting their hauling done a little cheaper than others. In short, they did everything which, according to their long, hard training in the competitive struggle, had been

found helpful in the race for wealth and power. The natural result of this growth and this exclusive control was hardship and injustice to others less able to take care of themselves, and a certain amount of influence with governmental agencies which, while not always corrupt, was always dangerous. Prices could be dictated, competition made impossible, supply regulated. In fact, any one of these industries was impregnable in its own field of endeavor. It was not long before sporadic appeals were made to the public, then following these an occasional action brought in court by individuals, and still following this, spasmodic efforts of State officials to compel them to pay taxes and to enforce laws against the restraint of trade, and in many forms to subject them to the control of some authority. The many methods of incorporation and the many avenues open to escape these sporadic efforts to control them made it practically impossible to subject them to a firm and constant control. Their influence was strong in politics, because they did represent great material prosperity and thrift, and they furnished abundant opportunity for the employment of all grades of labor. Their influence pervaded social life, because they were built up by clean, high-minded, strong-hearted men, who loved to have and enjoy the means of social advancement. Their influence was strong in the churches, because earnest, sober, well-disciplined men were required to perfect the organization. Political parties timidly criticised the principle of monopoly, but never really meant to lay a very heavy hand upon them, for political parties are simply the instruments with which material development sometimes does its work. As long as a party is a flexible instrument, fit to promote the interests of material development, it is used, and, when it ceases to serve this useful purpose, it is thrown aside and some other party is taken in its stead. Parties do not make development: they simply conform to it. They do not make events: they simply try to interpret them. Well, these great industries have grown past the day of competition, past the direct influence of popular sentiment, past the control of local communities, past the conscious reach of the State; and, as they have grown, they have taken with them, into the public relations which they inevitably sustain, all of the shrewd trading instincts of the

smaller trader. They seem to have at times overlooked the thought that the larger they grew, the more they control, and the more they become the sole dependence of mankind in their department of the world's economy, just that much more have the people at large an interest in the way they exercise that absolute control. Without doubt there came with their growth certain evils and excesses which required correction, and it is beyond dispute that the correction of these evils and excesses could not be safely left to mere chance or change. The fact that these evils and excesses did come with this great and rapid growth is not surprising, nor is it a sufficient reason for an assault upon economic forms of thrift and enterprise. The truth is, that in "hard times," which occasionally come upon us, the people are so anxious to have good times they will either openly or tacitly license any form of industrial enterprise in order to bring about the one desirable thing,—prosperity. So, periodically, we take the "bridles off," so to speak, and let every form of enterprise grow in whatever direction it may choose. Then, again, when everything seems safe and the country's prosperity seems invulnerable, we ask the nation to "hobble" these industries, tie them hand and foot, and impose upon them the severest form of restraint.

At the present time we are witnessing a period of investigation and restraint which, following so closely on the heels of a great campaign for "restored confidence," seems to prove the sporadic nature of our economic reforms. We must stick to the facts, however, and not get so excited as not to be able to see things in front of us. There were certain great industries in the country which required some sort of check upon some branches of their activity. Whether from habit or from long-continued immunity, they nevertheless had come to feel that they were securely entrenched and were not subject to any authority except the self-regulating influence of trade and rivalry. They were not on this account to be outlawed, nor were their operators to be accused as criminals, for whatever wrong they brought was at the express invitation of both political parties and the implied acquiescence of the government itself.

President Roosevelt came to his great office the second time

just when we were at the height of our great prosperity. He could not be blinded as to the existence of certain of these evils, nor to the fact that they were multiplying with the years. It is true that the attention of the country had been called to them, and that our public men, notably Mr. Bryan, had for many years pointed out their existence and the menace flowing from them; but the time was not ripe for the application of remedies. Mr. Bryan, unfortunately for his ambitions, called attention to them at one of those periods when the country had taken the "bridle off," and did not wish to hear of restraint. President McKinley had stood as the representative of restored confidence and re-established prosperity. His party had been made the medium by material interests to bring these things about. When President Roosevelt came to power with a direct commission from the people, he came at a time when these questions had to be met or evaded. The struggle of the Titans was bound to ensue. The assertion of some authority had to be made. The correction of some evils had to be accomplished. Another one of those periods had arrived when the "hobbles" had to be put on and particular industries subjected to severe restraint. Confidence was restored, prosperity was re-established, and these blessings were thought to be perpetual.

In addition to this, rising and aggressive schools of radicalism were making great headway in the populous cities, and, if these evils were left to grow until some representative of this new radicalism came to power, it were difficult to predict to what extent the revolution would go.

President Roosevelt was confronted with three distinct dangers when he undertook to apply the remedy.

The first was that he would precipitate a general war on thrift and enterprise in an effort to lop off the evils manifest in some industries.

The second was that he would wrench the power of the national government in his effort to extend its jurisdiction of the new subject-matter.

The third was that in his resolute endeavor to make government an instrument for the betterment of mankind he would unwittingly recognize the most advanced forms of socialism and give to them great encouragement.

The first of these would be acute, disastrous, but not irretrievable.

The second would be far-reaching, revolutionary, and fatally permanent.

The third would be long in coming, not immediately felt, but essentially a recognized part of the policy of a great nation hereafter.

Resolutely he set himself to the task, and we are now concerned with just what the precise result of this struggle will be.

It is not questioned that he has established the supremacy of the national government over every and all manner of industrial giants. It is not disputed that he has caused a higher standard of economic justice and honesty to be erected in these very industries. It cannot be contended that he has not employed all the powers of his great office in what he earnestly believed was for the betterment of mankind.

The first serious question that grows out of his assertion of the power of the national government is whether it does not serve to efface the lines of the State, and make a fact instead of a prophecy out of a statement of his Secretary, Mr. Root; in other words, whether it does not mean that hereafter every great question must be solved by the Federal government alone.

The second serious question that grows out of his accusation against certain industries is whether it has not already gone far enough and already threatens to create an acute attack of destroyed confidence. Of course, the mere risk of destroying confidence is not sufficient reason for refusing resolutely to prosecute great evils.

The third serious question growing out of his effort for the betterment of the human race by using the government as an agency for that purpose is whether he has not unconsciously, but surely, committed us as a nation to the primary theory of the most enlightened form of socialism, and whether or not, if the government is to be used as an agency for the betterment of mankind, that struggle for betterment will not always require it continually to extend its authority until it reaches the point where it will control all of the agencies for production and distribution.

As to the first question, it must not be understood in speaking of "State rights" that I mean that kind of State rights which

justifies "secession" or "nullification": that unhappy controversy was settled by the fortunes of war. The sovereignty of the State as now employed means the keeping intact of the full measure of authority and power residing in the people primarily and exercised by the State government, when not prohibited by the State constitution. As the State government may do anything which is not prohibited by the Federal Constitution or the constitution of the State, and as the Federal government may not do or should not do anything which is not fairly authorized in the Federal Constitution, it seems clear that the State government is naturally the most flexible medium for the expression and enforcement of the will of the people. It is the one agency especially adapted to meet and solve all new questions. No problem is so modern or so complex that it may not be met under the reserve powers of the people acting through the States. Whether the States have suffered these problems to go unsolved is not the question.

On the other hand, the national government, exercising no original powers and incapable of initiative, unbending in its fixed limitations, is not adapted as an instrument to meet the changing forms of industry and the growing complications of a developing country. Logically, therefore, it would seem that the State, as a sovereignty extending to every department not forbidden by the Constitution, could best encounter and solve the new and difficult problems. Logically, it would seem that the national government, set as it is within a specific grant, is wholly unsuited—unless this grant be enlarged or set aside—to the difficult conditions presented by our growing and complicated economic questions. So that, so far as the scheme of our government is concerned, it is admirably adapted by the distribution of its powers to deal effectively with all problems. I know it is asserted, not without much foundation, that the States have not grasped and enforced the authority which lay within their hands, and that the crisis has arrived when on account of this inertia of the States the Federal government must act instead; but this hasty selection of the Federal government as a means of correction leaves out of account the natural principle that in all great questions the solution comes very slowly and only after it has burdened the conscience and judgment of the country with its weight

for a long period. It also overlooks the fact that, if the republic is to continue as a republic, in substance as well as in form, it must do so through a rigid regard for the broad foundations upon which it was built. The stripping of the States of their power by the exercise of the same power on the part of the Federal government may effectively correct existing evils, but no amount of work or reconstruction will ever restore to them that which they have lost if what they lost is held and exercised by the Federal government. The procession thus set in motion toward the centre will not turn back until it has been resolved into its original elements under a new governmental adventure.

It is also claimed that there are some aspects of interstate development which cannot be wholly dealt with by the States. I think, however, a more correct way of putting it is to say that there are some features of interstate business which the States have failed to deal with as they should.

The net result of the President's policy, in so far as it affects the States, will be either to supersede their authority by the authority of the nation or awaken them to the imminent danger which threatens to reduce them to mere hollow forms instead of virile and sovereign republics. We can all see clearly that the provocation for the assertion of more Federal power is great, and we can all see just as clearly that the States have not kept alive and grown with the march of events. But many of us have been looking with increasing concern upon that policy which will bring about absolutism, as expressed in a nation, instead of a union of commonwealths,—a policy which threatens to reduce "an indissoluble union of indestructible States" to a growing union of indefinable States. The question as to whether this will in the end prevail, like all such questions, finally rests with the people of the States. It is one, in a qualified sense, of their capacity for local self-government. I prefer to believe that they have this capacity, and that they ought to be permitted to exercise it.

The second serious question growing out of the President's investigation of some of the industries of the country is not simply a question of disturbing business, because, if business is done wrong and that wrong is against the public, it ought to be disturbed. It is rather the question of whether, as the

result of the policy of the government, thrift and industry shall suffer under the espionage of that government,—an espionage which is capable of great injury and misdirection. The acute question is whether we have not already assailed the business of the country about as much as it will stand.

We sat by and acquiesced in the growth of business according to existing standards; we hailed men of intrepid spirit in commerce as "captains of industry." The government, in various ways, extended its protection to them and gave them in one form and another its favor, if not its bounty. We taught the average business man the standard of integrity to which he now holds. We encouraged him to expect that the government would favor him because he was developing the country. We educated him to the view that, as we do not hold a soldier to the highest standard of moral conduct as long as he is a brave soldier, we did not mind his shrewd speculative instinct so long as he developed the resources of the country. We rightly recognized the fact that many men must fail in each industry before one could finally succeed. We knew that each concern was burdened with a debt which came from the cost of improvement and change, and that, as this cost increased, there was a growing demand that the service or commodity which that concern controlled should be reduced in price to the public. Knowing, as we all know, that out of all of these things evils were bound to come, and did come, yet is it not about time to take the strong fingers of the nation from the throat of industry, and let it breathe easy until it can get its bearings and have time to reflect over the severe "drubbing" which has been administered?

The third serious question growing out of the policy of the government is, as I have said, not immediate nor imminent. Hitherto we have accepted and acted upon the theory that the function of government is the protection of life, liberty, and property. This meant simply that in all economic matters affecting the production and distribution of wealth the government stood as a negative power, to which any one aggrieved on account of a violation of its laws could appeal for protection. The new order of things, necessarily growing out of an effort to deal with new questions, seems to go further than this, and to hold that the government, instead of being a great neutral

or negative force, is a vital, growing, affirmative policy, designed to bring about not merely political and civil equality, but to establish a sort of economic equality,—a policy which concerns itself with the wealth of the rich and the poverty of the poor; a policy which, if carried out to the last analysis, would require that the government take upon itself the burden of rendering measurably equal not only opportunity, but the fruits of opportunity; a policy, in short, which would have the government see to it that the rich do not grow too rich and that the poor do not grow too poor; a policy naturally attractive to the broad, deep human sympathies of the human race. But, if it is adopted, the very thing which has made men risk their lives and fortunes in the conquest of Nature will be taken away. The prize for which men of daring have contended and on account of which the tremendous machinery of modern industry has been put together will no longer excite their ambitions or attract their hopes. There are no wars in which men may become conquering heroes. There is no Elizabethan age in which men may strive for excellence in literature. There are no undiscovered worlds to which they may go as adventure-some discoverers. There is no formative revolutionary period to whose absorbing problems they may give the force of their genius. There are no constitutions to be formulated and adopted, to the building and expounding of which they may develop their energy and industry. There is no religious crusade in which they may enlist and contribute their thought and labor. There is open to them the one thing upon which the world agrees is the supreme test of genius, and that is the getting of wealth and power. If the government extends its power so as to reach and arrest the course of their energy and genius in this one thing, then at least we will not marvel if industrial depression and inertia ensue.

I would not be understood as suggesting that President Roosevelt consciously stands for this or that he is anything but the most intense lover of the republic; but I may be permitted to call attention to some of the things which I think his policy may ultimately produce.

III. DEPARTMENT OF EDUCATION AND ART.

I. THE RELATION OF PUBLIC EDUCATION TO THE PEACE MOVEMENT.

BY HENRY P. EMERSON, SUPERINTENDENT OF PUBLIC INSTRUCTION, BUFFALO, N.Y.

I have been asked to speak briefly on what the schools can do in the interest of the peace movement. It is a subject which at least has the merit of not being hackneyed and worn out. An examination of the indexes of the Proceedings of the N. E. A. for the past ten years fails to show that any address or paper has been delivered before that body or any of its departments even remotely bearing on this topic. During the past summer, however, the subject was discussed by Superintendent Schaeffer before the N. E. A. meeting at Los Angeles and by Dr. Dutton before the New England Institute. An extract from Dr. Schaeffer's paper is the only literature bearing upon the relations of our schools to the peace movement which I have been able to discover. The few thoughts which I shall offer at this time will therefore of necessity be such as are suggested by my own experience.

Every school, if properly conducted and animated by the right spirit, is a quiet agency in the interest of peace. A school is normally a peaceful institution. The habits of neatness, order, and punctuality; the respect for and obedience to properly constituted authority; the training in attention when attention is necessary; the lessons in application, industry, and systematic effort; the mutual concessions which are essential in school life; the awakening of an interest in the country and the world at large,—all these tend to give a training that is peaceful and social rather than militant.

A school where the young are given something elevating to think about; where they have informal talks by principals and teachers that will broaden their views and appeal to their

better natures; where an effort is made to cultivate a right civic spirit, an intelligent rather than a jingo patriotism, an interest in the general good apart from selfish considerations; where in teaching history more attention is given to the victories of peace than to the victories of war,—such a school will exercise a quiet influence in exalting the common, everyday virtues, and in leading our boys especially to feel that achievements accomplished in the field of invention or scientific discovery, in exploration, or in philanthropic effort may be no less heroic than deeds done on the field of battle.

It is also doubtless true that the mental and moral attitude of the citizen toward life is influenced to a considerable extent by the sort of school discipline to which he is subjected in his youth. The discipline of the school should be one of reason, and not of mere authority. The schools of Germany are doubtless in some respects better than ours, but keen observers agree that the spirit of our schools is superior. In Europe military discipline is expected as a matter of course. There it is necessary to keep the military spirit alive. There the schools are managed by central authority, here the management is democratic. There good order is required because the teacher commands it, here because it is best for all.

We should aim to discourage the element of coercion, and substitute for it self-control. It is easier of course to govern by fear. You may make a fractious boy give outward obedience to rules through fear of bodily pain, but you cannot change his attitude on the general question of obligation and duty except by long-continued patience and persistence. The less we repress and tyrannize over children, the greater their tendency to assert their freedom sometimes in disagreeable ways, but there is no other method of leading them into that self-government which is the end of education. The weakness of repressive school government is shown when vigilance is relaxed or the teacher is out of sight. Where there is no choice, no putting on honor, no confidence shown, no freedom allowed, there can be no development of self-control. If in our schools we can produce reasoning beings instead of mere automatons, we surely help to safeguard the nation against the sway of unreasoning impulse and hatred.

Much can be done in the interest of peace by arousing in

the young right ideals. The characters described in biographies and histories should be so presented that the worthy men and women, the real heroes and heroines, the benefactors of mankind, shall win the love and reverence of the children. Above all, history should be so taught that the young will not feel that the only immortals are the victors in battle or that mere military success is alone sufficient to make any man great. The really great characters of history should be used as a means of creating ideals to which the thought and life of the young may gradually be assimilated. If the same patience were shown in this direction as is shown in making plain the intricacies of arithmetic and grammar, who can doubt that the character and conduct of each new generation would be modified for good, and right thinking and right action be made habitual?

True moral teaching affects conduct indirectly by the general elevation of ideals. It cannot be separated from the general discipline, instruction, and moral atmosphere of the school, but it must be the air which the child unconsciously breathes. The stuff out of which the ideal is made, so far as children are concerned, is always character, qualities incarnate, not rules or precepts or ethics.

You cannot interest children in abstract principles, but high and noble qualities embodied in Horatius or Sidney, in Bruce, William Tell, or Grace Darling, in Washington, Lincoln, or Lee, win their admiration and help to mould their minds and dispositions into the same likeness.

One fact that makes it difficult to inculcate a spirit of opposition to war is that war has unquestionably been employed many times in the past to prevent wrong and injustice, to beat down tyranny and oppression, to save the weak from destruction, to exalt righteousness among men. Some of the most soul-stirring literature is founded upon heroic deeds done in war. Our poets, who of all others are supposed to love peace and to shrink from the strenuous life of the camp and battlefield, supply us the very literature that gives the most powerful impetus to the martial spirit. Tennyson, who tells us that

"Kind hearts are more than coronets
And simple faith than Norman blood,"

also fires the heart of the school-boy with such a call to battle as the charge of the six hundred at Balaklava:—

“Theirs not to make reply,
Theirs not to reason why,
Theirs but to do and die,
Into the valley of death
Rode the six hundred.”

Probably no man loved peace and domestic quiet more sincerely than Cowper, yet his lines “On the Loss of the ‘Royal George’” has stirred successive generations of school-boys:—

“Toll for the brave!
Brave Kempenfelt is gone;
His last sea fight is fought,
His work of glory done.”

“Sheridan’s Ride,” “Horatius at the Bridge,” “Old Ironsides,” “A Song in Camp,” “How sleep the Brave,” Browning’s “Incident of the French Camp,” Campbell’s “Ye Mariners of England” and the “Battle of the Baltic,”—all foster a military spirit, and yet few thoughtful people would deliberately say that these stirring compositions should be omitted from our school readers. Elizabeth Browning aroused England with the cry of the children working in the mines:—

“The young lambs are bleating in the meadows;
The young birds are chirping in their nest;
The young fawns are playing with the shadows;
The young flowers are blowing towards the west.
But the young, young children, O my brothers!
They are weeping bitterly.
They are weeping in the playtime of the others,
In the country of the free.”

But Mrs. Browning, in the story of the Italian court lady visiting a hospital of wounded soldiers, says:—

“On she passed to a Frenchman,
His arm carried off by a ball;
Kneeling: ‘Oh, more than my brother!
How shall I thank thee for all?
Each of the heroes around us
Has fought for his land and line;
But thou hast fought for a stranger,
In hate of a wrong not thine.’”

Here the poet beautifully brings out the thought that war is sometimes justifiable, especially when it is waged in behalf of the weak and to redress a wrong not our own. It is upon this plea that our late war with Spain was defended. The American people, whether acting upon mistaken premises or not nine years ago, were surely animated by the highest motives that ever carried a nation into an armed conflict, and yet the Spanish War has always seemed to me a striking illustration of a terrible national calamity that might have been avoided. No positive evidence has ever been adduced that the Spanish government had any hand in sinking the "Maine." That Spain would soon have withdrawn her forces from the island, I think, is generally believed. It was a war that could have been adjudicated by investigation and arbitration. All that was needed was deliberate action, time for the people to think the sober second thought. What the schools should aim to do is to produce men and women who will be governed by reason, and not by impulse, who will say, when disputes arise, "Let us discuss this matter; let us think it over." It is at least as incumbent on a nation as on an individual to investigate instead of rushing heedlessly into a conflict which may leave a train of evils to distress and torment through many succeeding years.

We should see to it in our schools that every youth gets into his head the distinction between wars that are necessary and justifiable and wars that are waged for revenge, for conquest, or for national or personal glory. Without formal moralizing or preaching, we should be sure that the sharp contrast between two characters like Napoleon and Washington is seen and appreciated.

Over against the attractiveness of war as war, the school should aim to make the young feel that the glory of a military leader rests not merely on his great victories, his splendid conquests, but mainly upon the aims which animate him. We should try to exalt triumphs of the non-militant kind. We should teach that the only real standard of courage is a moral one; that the daring of Blondin, the tight-rope walker, is not to be compared with that of Florence Nightingale ministering to wounded soldiers in the hospital. It is not impossible to make the young feel that the inventor, the ex-

plorer, the teacher, the philanthropist, has claims upon our honor and gratitude in a larger degree than the mere fighter; that arguments are better than cannon in settlement of disputes: that it is a greater moral conquest for a people to deliberate and consider both sides than to precipitate war by clamorous appeals to passion and prejudice.

Our schools should do more than they have hitherto done to interest the older pupils in what has already been accomplished in this movement for the world's peace. On the various anniversaries which it is the custom to observe in these days, inspiring talks should be given, explaining the progress that has already been made in international arbitration. Sufficient time should be taken to explain the present doings of The Hague Conference. The ruinous cost of standing armies and tremendous navies should be explained. The dream of a good time coming, when "the war-drum throbs no longer, and the battle-flags are furled In the Parliament of man, the Federation of the world," even though it be a dream, is a more inspiring theme than stories of bloodshed, siege, and pillage.

But the movement to substitute arbitration for war is not a dream. So far as Europe is concerned, we have only to compare the last quarter of the nineteenth century with the first quarter, to see a great gain. Some of the keenest observers believe that war will gradually disappear, not because of the terrible suffering it entails, not because it is so destructive of life and property, but because by a process of social evolution it will be outgrown. Just as some aggressive boys spend their youth spoiling for a fight, and yet, when they come to manhood, expend the same energy in business and useful activities, so the race, as it advances, learns to put aside the "juvenile propensity for warfare" because it is busy with larger aims and more important work. Great social questions—what we call the problems—are more and more engaging the interest and energies of civilized man.

There is a deepening interest in human welfare. There is growing up a kind of world patriotism. The scientific and inventive spirit is opening a wider and wider field for peaceful conquest. The conflict between capital and labor is enough like war to satisfy most people. The new attitude of govern-

ment and people toward combinations in restraint of trade, towards "swollen fortunes" and "crimes of cunning," more dangerous than crimes of violence, will absorb the thought and energy of people and at least reduce the probability of international war. The spectre of imaginary foes, the plea of preparation for war as the best method of preventing war, the demand for larger battleships and stronger harbor defences, will not forever satisfy a people whose greatest triumphs have been in the field of invention and engineering, of manufacturing and commerce. Militarism must give way before industrialism.

The schools accelerate this movement by creating new wants and higher ideals, by supplanting the courage of the bully with the courage of the real hero and benefactor. The recent unveiling of the Verdi monument by the Italians of this city was especially significant, because it glorified a musician instead of a general. The school parade in Buffalo during Old Home Week was typical of the new era, for the pioneer, the inventor, and the statesman were given due prominence. The arts of peace were exalted rather than those of war, and the exhibits of our new industrial education made the deepest impression of all.

I know it is quite the fashion to look upon this peace movement as purely visionary. Every great movement is weak at the outset. Opposition to the divine right of kings was new once. Liberty of conscience was exceedingly modern two hundred years ago. The democratic spirit was denounced as subversive of society, good government, and religion, but it grew and is still growing. The Copernican theory of the solar system was once not only new in science, but heresy in religion. Science and religion have been compelled many, many times to accept the new. Seventy-five years ago the anti-slavery movement was looked upon as dangerous and treasonable, but it increased until it controlled the national government and carried the country through a tremendous civil war. The new makes history. It shows the drift of pioneer minds. It asks questions and will have them answered. The man who declares that no new light is possible on dark subjects, who believes that things must always be as they have been, who groans in spirit and fears that the

world is going to the bad because it thinks differently and in new channels, does not really believe in God. Let us hold in all confidence that his wisdom is better than man's logic, and that the course of the race is to be forward, and not backward.

"Our little systems have their day;
They have their day and cease to be:
They are but broken lights of Thee,
And Thou, O Lord, art more than they."

2. THE RELATION OF TEACHERS TO THE CAUSE OF PEACE.

BY FANNIE FERN ANDREWS, BOSTON, MASS.

The supreme aim of education is to develop men and women who can carry on effectively and nobly the work of the world. Progress, in every line of action, is coincident with right training and right thinking on the part of those destined to advance the world's interests. The burden of education, then, is to discover these interests, and to prepare each person to perform his part in their development. This obligation involves a knowledge of the underlying principles and movements that make for progress. Thus the teacher, the interpreter and exponent of the educational system, must be keenly alive to all the influences affecting the child's development; and at no time has it been more necessary for the teacher to have a full appreciation and properly conceived notion of the forces making for development than the present age, permeated as it is by the new spirit of internationalism. The phenomenal growth of a world consciousness is the distinctive feature of the twentieth century; and contributing to this development is the whole category of human activity. In the advancement of industry, education, religion, science, literature, art, philanthropy, and government, the inhabitants of the world, regardless of national boundaries, have intermingled their interests in the pursuit of great achievements. The commerce of the United States, for example, has reached out to the farthest markets of the world. American educational ideals have come from a sifting process of world ideals; religion in the United States represents all the great religions; the present status of science is the result of the composite achievements of the scientists of all lands; our literary sentiments are akin to and influenced by those of other peoples of the world; our development in art reflects the aspirations of all the great masters; American philanthropy is a response to the common sentiment of the brotherhood of man; and the

government of the United States illustrates the outworking of world political principles. Thus the activities of the United States have influenced and have been influenced by similar lines of action in other countries of the world; and likewise the activities of every country have been interdependent with those of all others. This natural communication and co-operative life of the peoples have amalgamated the sentiments of the world, until we find a tangible recognition of international affiliation. The teacher must realize this situation, and fully comprehend the meaning of the great international movement which is affecting every activity of the world.

Moreover, the future development of these various departments of life is dependent on intercommunication, the increase of which is strikingly inevitable. This trend of action, however, must be regulated; some definite organization of the peoples is a positive necessity for facilitating world progress. Much, indeed, has already been done in the way of organization. Unconsciously, ever since 1794, when John Jay was burned in effigy for putting an arbitration clause into our treaty with England, the nations have been working for an organized world. The practice of arbitration thus inaugurated, and now involving the settlement of over two hundred and fifty international disagreements, has brought the nations together, and made the avenue of approach simple and natural. In the crystallization of this movement into The Hague Court of Arbitration, provided by The Hague Peace Congress of 1899, the nations have established the germ of the judicial department of a world government. Can we wonder at the existence of a new international spirit, when we behold nearly all the great nations of the world seeking justice at this tribunal? Not only, indeed, does the adjudication of the four cases at The Hague Court establish the precedent for world judicial action, but the settlement of the North Sea incident between Great Britain and Russia by a committee of investigation, the intervention of President Roosevelt in bringing to a close the Russian-Japanese war, and the signing of more than forty treaties of obligatory arbitration pledging references of disputes to The Hague Court, all prove the practicability of judicial intercourse

among the nations and the existence of a general desire for the complete development of such a system.

When the powers of Europe sent delegates to the Congress at Vienna, in 1815, for the purpose of bringing order out of the political chaos left by the Napoleonic campaigns, there was then inaugurated the custom of holding international congresses at the call of nations; and, side by side with the system of arbitration, these congresses have pointed directly for an organized world. The decisions of the more than thirty of these conventions, held in the interest of industry, science, government, and humanitarianism, have paved the way for united action on matters pertaining to the most delicate international relations. When, therefore, the Czar of Russia issued his manifesto in August, 1898, declaring that the ravages of the war system were threatening the moral and material welfare of the world, it was only logical that the nations should respond to his invitation to send delegates to a conference for the discussion of a subject heretofore held inviolable by each individual nation. The new world machinery set in motion by those one hundred delegates from twenty-six nations of the world has established the conviction that the institution of war is a matter of common concern to the nations, and as such should be treated as a world problem. With remarkable swiftness the nations are recognizing that they have no vital interest wholly independent of other parts of the world.

The most striking expression of this world consciousness is the meeting of the first parliament of nations now assembled at The Hague, the last in the series of international congresses. The participation of every government in the world in this Second Peace Congress involves world-wide discussion of the subject of international peace; the antipodes of the earth are thinking simultaneously about a common problem. This immense public opinion of the world, manifested by the letters, cablegrams, and memorials which have daily poured into The Hague since the Conference opened on June 15, from nearly all quarters of the globe, has forced discussion of problems on the solution of which the further advancement of civilization depends. Can we fail to recognize the dawn of a new era when every nation of the world is

considering the advisability of enlarging and improving the system of arbitration through a permanent international court, of establishing neutralization of all unoffending private commerce at sea, and of signing a general treaty of obligatory arbitration? What surer indication of a new spirit among the nations than the world-wide interest in the limitation of armaments and in the establishment of an international congress in which the nations may consider any and all subjects which concern their common relations! The passage of such measures would produce results of far-reaching significance. It is only a logical inference from past procedure that the international congresses will culminate in a world legislature, where the representatives from every government will legislate for the common welfare. The legislative department of a world government is destined to develop side by side with the judicial; and it also follows that an executive department, formed to carry out the provisions of the world legislature, will complete the rounding out of a world republic. Each department is a necessary complement to the other two.

And what is the final result of all this? An organized world means international peace; and ultimate progress is dependent on harmonious, unrestricted, uninterrupted communication among the peoples of the earth, which will be possible only when the nations feel the security of permanent peace. To develop men and women, then, who can carry on the work of the world, the teacher must have a full appreciation of all these tendencies toward world unity. They have not gone on of themselves; for back of the intercourse among the peoples in industry, education, religion, science, literature, art, philanthropy, and government, and the co-operative action of the nations toward an organized world, there has been a force, strong and impelling, which has organized and directed these natural and inevitable currents of progress. This specific, definite work for international peace began more than three centuries ago. The "Great Design" for the federation of Europe, formed by Henry IV. of France in the sixteenth century, was a remarkable plea for unity, fraternity, and co-operation. So, indeed, in his "Rights of War and Peace," published in 1624, has Hugo Grotius inspired the thought of all ages with the hope of universal brotherhood.

A contemporaneous expression of the same sentiment is shown in the founding of the Society of Friends by George Fox, whose organization has preached the doctrine of non-resistance down to the present day. That remarkable "Plan for the Permanent Peace of Europe," published by William Penn in 1693, Kant's essay on "Eternal Peace," showing that war will not cease until the world is organized, and the later words of Channing, Sumner, Burritt, Cobden, and Jean de Bloch, express with unmistakable emphasis the fundamental principles of human brotherhood. These peace prophets have interpreted the meaning of history. With clear and true vision they have mapped out the course of progress, consistent with the universal laws of life.

One of the very first organizations to work for international peace was the American Peace Society, formed in 1815. This association originated the international peace congresses, and has seen develop more than five hundred peace societies throughout the world, which are now formed into a great international organization, having annual congresses and a permanent bureau at Berne, which conveys to the governments of the world the recommendations of the peace congresses. The peace movement, however, is not confined to peace societies. To-day associations of almost every character and individuals in every walk of life are pledging themselves to the cause of peace. Never before in the history of the world were the active forces of mankind joined so unitedly in the achievement of a common purpose. Twenty-five hundred statesmen from the parliaments of the different nations are working out together a practical plan for an organized world. This body of men, called the Interparliamentary Union, is the symbol of interdependence. This voluntary association, formed in the interest of the world's political progress, has quickened among the governments a live consciousness of the necessity for common effort, has proclaimed an organized world the prerequisite for the fullest development of each nation. Of all the forces working directly for the peace of the world, this distinguished company of legislators holds first rank. By virtue of their position they are able to put into execution their advanced theories of government. The work of this organization suggested to the czar the idea of

calling the First Peace Congress; the invitation to the Second, initiated by President Roosevelt, was sent out at the request of the Interparliamentary Union, convening in St. Louis in 1904; and at its famous meeting in London, last summer, this body made out a programme, which has been substantially adopted by the Second Peace Congress.

Coincident and co-operative are the efforts of the business men of the world, who are arraying themselves against war by the adoption of plans that will bring about world peace. The business men of England and France were a powerful influence in effecting the arbitration treaty between these two countries; and in the United States over a hundred business men's organizations have pledged themselves in favor of international arbitration. It is this great body of public benefactors who are urging the neutralization of the trade routes of the ocean,—a condition consistent with an organized world.

Throwing also their weight into the scale in favor of international arbitration are the labor organizations of the world. At the Convention of the American Federation of Labor last November a resolution was passed, asking that the Convention go on record as favoring lasting peace among the nations, on the ground that constant peace contributes to the welfare of workingmen. The indorsement of this resolution by labor organizations in other countries shows the great mass of people to be in favor of international unity.

So, too, are the churches preaching the gospel of peace in a practical way, not only by observing Peace Sunday and teaching the sentiments embodied in this idea, but in actual demonstration concerning the movement for an organized world. A cablegram, creating much interest during the First Peace Congress, was that sent by thirty Baptist ministers in the State of Oregon, each paying one dollar for its delivery, asking the delegates at The Hague to adopt such measures as would tend toward international justice and unity. Last April Rt. Rev. William Croswell Doane, bishop of the Episcopal diocese at Albany, N.Y., sent a letter to his people, earnestly calling attention to the Peace Conference at The Hague, and beseeching them to pray that the members of the Conference may be of one mind, to the end that "God may give unto his people the blessing of peace."

The women's organizations have joined this progressive march. There is hardly a woman's club that has not considered this subject; and in many cases, the women of the United States have co-operated with school authorities in having the matter presented to the children in the schools. The Peace Department of the Women's Christian Temperance Union, having local organizations all over the world, the International Council of Women, with members in sixteen countries, are actively working for the promotion of peace. Both these organizations have given special attention to securing a universal peace demonstration on the 18th of May, the anniversary of the opening of the First Peace Congress, and especially the observance of the day in the public schools. The presentation to Mr. Carnegie of a peace flag, by the Daughters of the American Revolution, at one of the sessions of the National Peace Congress which met in New York last April, is an evidence of the support which that association is giving to this great cause.

And what part has the teacher taken in this great movement? He, too, has joined the ranks in the cause of peace. At Lille, in 1905, the Association of French Public School Teachers, having fifteen thousand members, declared in its resolutions that "the teachers are energetic disciples of peace. Their watchword is, 'War against war.'" The same year the International Congress of Teachers at Liège, represented by eighteen nations, devoted an entire day to the theme, "What can the schools do to spread the peace idea?" Among their recommendations was the special observance in schools of the 18th of May. Such celebration began in the United States through the initiative of the State Superintendents of Instruction in Massachusetts and Ohio in 1905. The next year other States, Vermont, Rhode Island, Connecticut, New Jersey, and Kansas, authorized the schools to hold special exercises on that day; and this year Pennsylvania, Montana, Idaho, Colorado, and California recommended its observance. That the celebration of peace day will become general in the schools is practically assured by the action of the Department of Superintendence, meeting in Chicago last winter, when eight hundred superintendents passed a resolution recommending suitable exercises in the schools on the 18th of May. In his first Annual

Report, Hon. Elmer E. Brown, United States Commissioner of Education, says concerning the day, "I would accordingly recommend that, so far as consistent with State and local conditions, the 18th of May in each year be designated as a day of special observance in the schools." Consistent with all this was the presidential address of Dr. Nathan C. Schaeffer, Superintendent of Public Instruction in Pennsylvania, who at the opening of the National Educational Association in Los Angeles last July, spoke on the topic, "What can the School do to aid the Peace Movement?" "Teach history," said he, "in such a way, that the pupil will write the name of the poet, the orator, the artist, the inventor, the educator, the statesman, the philanthropist, in a place as conspicuous in the temple of fame as that occupied by the victorious general or the successful admiral. Lead the pupil to see that Pasteur, the scientist, has done more for humanity than Napoleon, the destroyer of thousands; that Carnegie, the philanthropist, has done more for civilization than the admiral who sinks a hostile fleet." Dr. Schaeffer urged that the 18th of May be regularly observed in all the schools of America to inculcate sentiments of peace and international fraternity. Following this address, which was unanimously indorsed by the Association, the following resolutions, significant, indeed, as coming from this great body of national educators, were submitted by President W. O. Thompson, of the Ohio State University, and adopted with enthusiasm:—

The teachers of the United States of America, assembled in the National Educational Association at Los Angeles, Cal., view with pleasure and satisfaction the conditions which have brought about the Second Hague Conference. We believe that the forces of the world should be organized and operated in the interests of peace, and not of war; we believe that the material, commercial, and social interests of the people of the United States and of the whole world demand that the energies of the governments and of the people be devoted to the constructive and helpful pursuits of peace, and that the people be relieved of the burdens of providing at enormous expense the armaments suggested by the competitive desire for supremacy in war; we further believe that the fear of war and the possibility of war would alike decline if the governments were to rely more upon the sentiment of the people and less upon their armies and navies.

We urge upon our representatives at the Second Hague Conference to use their influence to widen the scope and increase the power of The Hague tribunal. While disclaiming any desire to suggest a programme or to urge a specific action, we do urge our representatives to secure the most favorable action possible upon international arbitration, the limitation of armaments, the protection of private property at sea, and the investigation of international disputes by an impartial commission before the declaration of hostilities.

We recommend to the teachers that the work of The Hague Conference and of the peace associations be studied carefully, and the results given proper consideration in the work of instruction.

The second resolution, that urging advanced action at The Hague, was at once cabled to our American delegation.

Last Fourth of July two other educational gatherings in the United States sent cablegrams to The Hague. The American Institute of Instruction, meeting in Montreal, after devoting a whole session to the discussion of patriotism and internationalism, cabled an earnest request that the Conference consider the full Interparliamentary Union programme, especially the limitation of armaments. And at the Fourth of July celebration by the great summer school of the South at Knoxville, Tenn., where three thousand teachers and citizens were in attendance, a most appropriate message was sent to our delegates at The Hague. This was inspired by the address of Edwin D. Mead, who had described an impressive scene on the Fourth of July, 1899, during the First Hague Conference. By invitation of the American delegation all the members of the Conference had gathered in the old church at Delft, and Andrew D. White, the head of our delegation, after giving a stirring address, laid a silver wreath upon the tomb of Hugo Grotius, the father of international law, in the name of the American government and people. The message from the summer school reads as follows: "America's representatives at the First Hague Conference on July 4 led the nations in honoring Grotius. We urge them to-day to lead in behalf of limiting armaments and of a regular international parliament."

These appeals from three of our largest educational gatherings give utterance to the solid support of the American teacher

to the movement for international peace. And this spirit of the teacher finds a responsive chord in the child, as was manifested at the great Young People's meeting during the National Peace Congress in New York last April, where four thousand young people voted unanimously to appoint a committee to organize the children of the United States into a League of Peace.

The educational organization for peace, however, is not confined to the public schools: the students in the colleges have taken up the work. As a part of the National Peace Congress, a most enthusiastic meeting, having representatives from several colleges, was held at Columbia University, where a committee of students was appointed to organize peace clubs in the colleges. Bright, indeed, seems the future of this plan, backed as it is by the Intercollegiate Peace Association, formed for the purpose of disseminating peace sentiments in the colleges, and already represented by over thirty universities and colleges in the United States. And now comes the announcement from President Reed, of Dickinson College, that a Department of Peace and Public Service will soon be opened as a memorial to William Penn. What finer tribute to the man who in 1693 published that remarkable essay on the permanent peace of Europe!

The educational campaign for international peace has begun, and every teacher in the world is responsible for its progress. He should lend his aid to the organized educational efforts, for they will not move without his support. Perhaps no greater opportunity is open to the American teacher than to assist the committee, appointed by the young people of New York, to organize a national Young People's League of Peace. The teacher, certainly, can make no mistake in supporting this committee, having such men on it as Dr. Schaeffer, Dr. Maxwell, and Professor Daniel T. Dutton, of New York, George H. Martin, and Edwin D. Mead, of Massachusetts. The teacher of the twentieth century is an international figure, and he can never perform his highest function until he is imbued with this international consciousness. He should stand shoulder to shoulder with his fellow-teachers in the world for the achievement of a higher civilization. One generation of teaching the principles of justice, peace, and international

unity would revolutionize the world. These sentiments can be taught in literature, geography, history, and, in fact, in every exercise connected with the school. There are many examples in literature that convey the peace idea: through geography, the children of the world should learn their true relations to other lands and peoples; history should show the aims and aspirations of the peoples of different nations, who, working together, are making modern history. The teaching of civil government should be supplemented by the teaching of international government. The child should become acquainted with the progressive steps in the making of a world government, for only in this way can he fully realize the significance of the administration of his own country. Moreover, such teaching will establish in the child modes of thinking consistent with the peace idea, as Baron d'Estournelles de Constant said to the New York audience of young people, "If you American children cherish love in your hearts for the French children, German children, and all the children of the world, when you grow up, you will not want to fight each other." The full realization of all great movements rests upon future generations. To what nobler work can the teacher consecrate himself than to build up a new people whose country is the world, whose countrymen are all mankind!

GENERAL DISCUSSION.

[Friday Evening, September 13, 1907.]

THE CHAIRMAN, HENRY P. EMERSON.—As an alumnus of the University of Rochester, I take especial pleasure in presenting the president of that institution, who will read a paper on "The Relation of College Men and Women to the Peace Movement,"—Dr. Rush Rhees, President of Rochester University. [Applause.]

DR. RHEES. *Ladies and Gentlemen*,—One little correction I must beg leave to make, and that is that never in any conscious moment did I agree to read a paper on this subject.

THE CHAIRMAN.—Well, we are glad of that. [Laughter.]

DR. RHEES.—It is obvious that the subject which is assigned to me is intended to deal with the men and the women who are the present students in the colleges, for certainly you could not expect me to have anything to say concerning the highly important and significant contributions which college alumnæ, as represented by Superintendent Emerson

and Mrs. Andrews, are making to the peace movement. It is rather with the man and woman during their student days that, as I understand it, the question that has been presented to me has to do. The words I have to speak are few and simple. I believe that the college has not done what it could do for the advancement of the interests of peace, and for a reason that may not appear immediately,—a reason which lies deeper in the organization of a college curriculum, and which to a less extent lies in the organization of the college administration; and, in order to pass immediately to the two thoughts that I wish to leave with you, I will say that, in my judgment, the college ought, through and for its students, to do two things,—to cultivate the sentiment of intelligent justice and to cultivate the habit of the practice of justice.

Dr. Rhees's address was then delivered.

3. THE RELATION OF COLLEGE MEN AND WOMEN TO THE PEACE MOVEMENT.

BY REV. RUSH RHEES, LL.D., PRESIDENT OF THE UNIVERSITY
OF ROCHESTER.

The first and obvious relation of the students in our colleges to the peace movement is that of intelligent interest in the progress which the cause of peace is making in our day. The fact that this relation is obvious is unhappily no assurance that such intelligent interest is always aroused. It is well, therefore, that such associations as this and the Mohonk Arbitration Conference and the American Peace Society are actively seeking to keep the colleges awake to the great significance of the modern movements for the abolition of war.

There is a more important relation than this, however, which students in our colleges may sustain to the peace movement. That more important relation is entered upon by the cultivation of a sentiment and a habit,—the sentiment of intelligent justice and the practice of intelligent justice.

The strength of the peace movement is in the sentiment which actuates it. The strength of the martial spirit lies in the sentiment which vitalizes it. War does not continue because fighting is one of the primal human instincts. It would have been put aside long ago as the barbarous and hideously wasteful folly that it essentially is, were it not for the sentiment of justice seeking to right a wrong or to defend a nation's honor. This sentiment of justice is not one of the lower impulses, but one of the highest imperatives of our nature. Its refinement and development have but strengthened its sway over the purposes of thoughtful men. The folly of war lies in the thoughtless and impulsive travesties of the idea of justice which often take her place and rule the acts of men. For this reason the most important contribution college students can make to the peace movement is the cultivation in themselves of a true sense of justice, clarified by intelligent understanding of the issues involved in the rivalries which bring men or nations into conflict.

For this culture a study lies at hand which has too often been omitted from our college curricula and relegated to the professional schools. I refer to the general study of law. Manifestly, colleges should not try to train legal practitioners,—their task is not that. Yet I can think of no discipline of the mind more quickening nor of any matter of information more helpfully enlightening than a study, for instance, of the Roman Law. The Romans were a people who took the idea of justice seriously, however inadequately they may have conceived it or however imperfectly they may have practised it. An equally inviting and highly rewarding study would be the development of the common law, on which the British ambassador recently addressed the American Bar Association with so great felicity. If it be borne in mind that this study aims at the most intelligent idea of justice rather than at legal training, it will be apparent that other efforts of men to order their relations justly will repay study,—for instance, the rules of the ancient guilds, the more modern rules of the labor organizations, and their correlates, the agreements into which competing firms and corporations have entered to further the attainment of equitable relations between them.

The student who analyzes these several systems will find in none of them ideal justice and in none of them an exact reflection of present conditions. But he will have schooled himself in the criticism of the equities of different relations, and will have developed in intelligence his own fundamental sentiment of justice.

But how does such a culture constitute a relation to the peace movement? In the most effective way. However it has been in the past, to-day it is the people, not their rulers, who make war. Rulers know too well the hideous horror of the struggle to lead their people into it. Even the Russian court probably thought that Japan would never fight, else their diplomacy would have taken a different tone. But I assume that we are more concerned with the order of our own house than our neighbor's. It is not wholly pleasant to recall the weeks that preceded the outbreak of the Spanish War. The cry "Remember the 'Maine'" did not constitute a very effective appeal to intelligent justice. It is conceivable that intelligent justice might dictate fighting. It came near that

in Japan's resistance of Russia's aggression. There may have been reasons of intelligent justice for a struggle between us and Spain, but the cry of those weeks was for unreasoning vengeance. For a highly civilized people this should be impossible. It can become impossible only as the sentiment of intelligent justice spreads and becomes controlling amongst us, shaping and restraining public opinion. Our college students—the most favored of our youth—should be the leaven amongst our people, working for the calm sense of justice, as distinct from surrender to impulsive passion.

If they are to be such a leaven in our social life, they need to cultivate more than the sentiment of justice; namely, the habitual practice of justice. For the culture of this habit the modern conditions of college life are peculiarly favorable; for the college community is a singularly definite social unit, with interests and customs peculiar to itself. I have time for only one or two instances. The growth of what is called college spirit in connection with college athletics has developed a sentiment quite akin to patriotism. The contests are waged for the college honor. The men of skill and prowess are heroes. There is much of the glamour and the shouting and the glory that accompany martial life. On the other hand, college athletic contests have been the occasion for increasing discipline in institutional self-control. Not all has been attained that may be, and that will be, yet college athletics offer a unique opportunity for the calm consideration of the claim of the other side, of the demand of justice when that clashes with seeming interest, and for the practice of intelligent justice.

So, too, in connection with college customs. These are about the most tenacious of social usages. Tradition concerning them is imperious, and young people are singularly susceptible to the claim of an institutional tradition. Yet young people are even more susceptible to a quiet, sympathetic, rational appeal. And the spread of student self-government and of so-called honor systems is evidence of the growing habit of the practice of justice.

This has, if possible, even more significance for the peace movement than the culture of the sentiment which directs this practice, for most of our actions are subconscious. When a

significant number of our people shall have acquired the habit of instinctively preferring the rational to the brutal way of settling disputes, the victory of the peace movement will be at hand.

I would that I had time to touch upon the bearing of the intelligent sentiment of justice and the instinctive practice of justice upon questions which are not always embraced in what we call the peace movement, but which owe their perplexity to the same instincts and impulses which lead nations to war. Yet perhaps it is needless that I say more than that the great need of the industrial situation and the commercial situation is a controlling loyalty to an intelligent sentiment of justice, and the check to passion which will be exerted by a habit of appeal to rational rather than material methods of settlement of abuses. For this attainment our college students can do much in their time. For this attainment their teachers have therefore now a high responsibility.

[Applause.]

THE CHAIRMAN.—I am glad, as I know you all are, that Dr. Rhees did not read a paper. [Laughter.] This has been an exceedingly profitable meeting, which, I believe, will bear fruit in this community and in others.

Mr. Secretary, is it customary to invite any discussion?

DR. RUSSELL.—Yes, it is the law.

THE CHAIRMAN.—If any wish to speak very briefly on this subject, I believe those who are not speaking will be willing to wait and pleased to listen.

DR. RUSSELL.—Mr. Chairman, the economical and sociological philosophers here did not escape challenge when they instructed us in their creeds and isms and as to their aspirations. The theorists last night in those fields did not get out without a hard struggle, and I should regret to see this meeting closed now without some discussion. I do not propose myself to controvert any of the propositions that have been announced. I think no one could but admire what we heard from my old friend Dr. Rhees, my old friend the superintendent, and my young friend here on my right [Mrs. Andrews]. [Laughter.] No one could more than I. I will be willing to admit that they spoke the truth on all these subjects. I myself am a man of peace. I didn't go to the Spanish War, and I will tell you that one reason was, I was afraid of getting shot. [Laughter.] I was like the fellow who was enrolled as a conscript, and wanted to apply to get off. He went to the recruiting station to see what ground his neighbor next door got off on. He looked down the list, and found it was "one leg too short." He wanted to make sure of it, so he wrote, "Both legs too short." [Laughter.]

I have often wondered why it is that in Dr. Rhees's college the athletes and baseball men and football men are all known among the high-school boys, and the great scholars who are there teaching philology and mathematics and everything like that are wholly unknown, and why it is that the newspapers in speaking of the affairs and happenings at college devote five or ten times more space to athletics than to anything else. Why, at Yale College the fellows that are out on the gridiron against Harvard or Princeton would lose a collar-bone and four front teeth rather than to see the blue go down in the dust. Why is it? Why is it that in Boston the noblest of scholars, the most eloquent orators, will turn out in large numbers to do honor to some prize-fighter, and have the mayor there? The mayor of Buffalo would never do it [laughter], but the mayor of Boston did it. I have been to Europe, and found that a distinguished citizen of Boston, the great pugilist of his day, was better known throughout Great Britain and Ireland twenty years ago than any other American citizen. Now I think that one reason for it is that they have contempt for physical pain. And that is the reason I didn't go to the war. My heroism is of the moral type. It is here that I dare anything, on the lofty perch of my professorial chair,—to hurl thirteen-inch shells at the enemy,—but, if I have an ulcerated tooth, I cry like a sick child for an anæsthetic. And I think there are others. In America how is it that everybody that is elected to the Presidency is a soldier? I think Buffalo has sent to Washington the sole representative since the time of Abraham Lincoln who was a man of the profession of peace, a man who was not of the profession of the soldier, and never drew his sword. I am afraid, because there are so many school-ma'ams present, I should leave out some of the Presidents if I attempted to call the roll and run down the list from George Washington to to-day. You can do that more reliably than I can, and you won't find a man, save Grover Cleveland, who was not a soldier or a lawyer, or both soldier and lawyer. I agree with the doctor that it is law that is going to save the world, and that ultimately this will triumph, not because Andrew Carnegie, as we have heard, puts a silver wreath on the tomb of Grotius, or anything like that, but because the women's clubs throughout this country have taken up this subject, and they are an irresistible force. [Laughter.]

Now I agree with just everything that has been said, but I still find some difficulties in the way of perpetual peace. I think there are propositions that cannot be settled by reason, cannot be given over to the arbitrament of reason. My bank throws out my check marked "Not sufficient funds." I deposited \$10,000 the day before,—of course, some other fellow's money, no mere lawyer has that amount himself [laughter],—and they credited it to the wrong man. Now I do not go down and shoor the cashier. Great business houses in New York have sent me bills, and I have found, by looking at the stubs of my check-book, that I had receipts from them. I have said, "I beg leave to call your attention to this receipt." I didn't go and hit the head of the house. Now there are controversies, it seems to me, that can be turned over to book-keepers and disputed in the field of reason and figured out from account books.

But if a man's home is invaded by a scoundrel, if I have the honor to escort some lady from this place to her home, and some ruffian says, "I will assault this woman, and you will stand here and see me do it," what is there for me to do? Run off and call a policeman? [Laughter.] I knew a fellow once who went out to escort two girls down the Coney Island road, and in passing on their bicycles through Prospect Park some ruffians came out and assaulted those women. He was a good rider. He got on his wheel and scorched off for help! Was that right? No, the only thing for a man to do under such circumstances is to draw his weapon, if he has any, or use his bare knuckles, if he hasn't, and stand right there, and fight, bleed, and die, if necessary, right on the spot. [Laughter.] Great Britain thought reason was the thing when the South fired on our flag in 1861. Now is that a thing to talk over? I am assaulted in the city of New York as I am leaving college on my way to my home, where I live the simple life, waiting to see Mrs. Russell and our children at the door. Some fellow meets me, and hits me. I say, "I am a Quaker, strike me on the other cheek." He takes my umbrella, and I say, "Take my dress-suit case, here is my coat and hat," because I am a man of peace. Is that right? [Laughter.] I would be discharged from the university. Nobody waits for the law in a case like that. The law is, as self-defence is defined in the penal code, that, if I see a man commit a felony in my presence, in the whole horizon I can scan, I can resist him to the death.

So I think there are controversies that cannot be settled save by force and violence. I agree that almost all of them can be submitted to arbitration, and that they should be. Now isn't it a more impressive spectacle, if there is any trouble over the Schomberg line down in Venezuela, to pay a good fat fee to Benjamin Harrison,—\$250,000,—let him put it in his pocket, and take his green bag and his grip and go over to Europe and argue a week or a month or as long as they will let him? Isn't that better than to have Sampson or Schley take seventeen battleships, worth four or five millions each, out into the middle of the ocean, and meet there some lord of the British admiralty, and have a test of strength between those fleets? What does that mean? It means nothing.

But I think there are problems. Will great States, like England, the United States, France, Germany, and Russia, accord an equal number of judges to small States, like Greece, Portugal, Holland, and Belgium? Will they do it? Have they ever done it? Do you think they will do it? That is a hard proposition.

But there is another question, suggested some years ago by the Lord Chief Justice of England in speaking before the American Bar Association at Saratoga. Suppose, for instance, there is a great international case. Could we trust any tribunal to adjudicate these matters without assuming an intolerable arrogance? Suppose we are now and here a court, and we put Nicholas at the bar. We give him his day in court, and we deliberate and say, "Nicholas of Romanoff, condemned you are by your masters, the representatives of the world, pay you must, or we will open up the cannon of civilization and blow you and your throne off the face

of the earth!" Next day we say to the kaiser of the house of Hohenzollern, "William, you are wrong because we say so, condemned you stand now at this tribunal." And the next day Theodore Roosevelt and Uncle Sam himself stand at the bar of universal justice, and they are condemned. Why, truly, this is the judgment of the gods! Can any men you know be charged with functions so supreme without assuming an intolerable arrogance? I think that is a very important question in connection with the method by which we can achieve all these splendid results that have been so vividly depicted by our orators to-night.

Now I think the study of the Roman Law, as suggested by Dr. Rhees, the study of the law in general, as well as of the ethical principles of justice, is going to accomplish peace, which I think, rather than love, as Drummond says, is the greatest thing in the world. Love we share with the brutes, but this peace, it is the noblest gift of God to man. I think great progress has been made since the time when over on the fields of Judea there was that angel song, "Peace on earth, good will to men." Whoever heard that song must have known it came right from heaven. It couldn't have come from earth. In no part of the world was there any such doctrine taught, but the Roman legions held everything under the heel of an iron despotism. I think large progress has been making until these times, when at this supreme moment all the great nations of the world are met at that noble temple at The Hague, trying to perfect some scheme for the determination of international disputes.

MR. FRANK HENDRICK, of New York.—Mr. Chairman. My friend, the learned General Secretary, has a way of opening up the bubble for everybody who has spoken before him, making what had impressed us powerfully excite our hilarity in equal degree. Now I think he should be exposed. Being in his confidence, I am able to resent his frivolousness to the extent of disclosing his method. He has a speech ready for every subject which can possibly come up in this convention. Indeed, he has these beautiful phrases for everything that has taken place in this world from the beginning until now, and you have been listening to one of his two thousand set speeches. [Laughter.] So do not credit him with too great impromptu fluency.

I shall try to leave one thought that appears not to have been expressed here. It seems to me that wars, especially in democracies, begin at the bottom, and that that is the place which it is most difficult to control. As I looked at Niagara to-day, I saw a force which, when once in motion, cannot be controlled until it is spent. President Eliot used to tell us—applying, it seems, to the students at Harvard the methods advocated by the speakers this evening—that the Civil War was started by a band of music playing in the streets of Boston. Now there are many of us who have been stirred by the music, the marching, the banners, and the memories of the Decoration Day parade. It was not the intelligence alone that was awakened. That sometimes checked us, and we felt, perhaps, ashamed, as of a weakness. But the feeling was there. It involved the psychology of the whole being, of the whole man. So it seems to me that, in studying the difficulties which the advocate of peace must meet, we must

study the aggregate psychology of peoples. The impulse to war may be initiated insidiously. It moves on, and in a democracy, when it is started, it moves on, as George Ticknor replied to Metternich, with a flooding force that can seldom be arrested. The methods that have been advocated to-night are just those that must be applied to prevent the origination of that force. But it must not be assumed that they can always be successfully applied or that they can ever be other than empirical. The purpose of the movement of educators is to suppress, so far as possible, false emotion. But there have been wars that were started by men incapable of emotion of that sort. Perhaps it is truer to say that these wars were inevitable. In Dr. Holmes's works there is a story, "My Search for the Captain." The present Justice Holmes was a captain in the Civil War. He went with some of the best young men in Boston, James Jackson Lowell, Charles Russell Lowell, Robert Gould Shaw, and many of the best of those who had most to lose. The serious purpose of these young men is illustrated in this story. Dr. Holmes went all over the South, and spent months in search of his boy, his everything. He was lost. He had been wounded or perhaps killed. After tramping up and down the South, encountering the difficulties and enduring the hardships of such a journey, he suddenly came upon his son, just from the hospital. The father said, "How are you, boy?" The son replied, "How are you, dad?" suppressing those sacred emotions which people of that cold New England climate are wont to suppress,—decently concealing them. Now the young men who fought that war with such a spirit did not have a particle of false emotion, and, when you get that kind of man started in a war, you may depend upon it that it is a just war, and we would better have it. [Applause.] Now, if you can reach down, through your movement in the schools, and suppress that emotion which we have too often in football games and in college heroics, reduce that to a minimum, you will do a great deal. And if you can, through the cultivation of the spirit of justice and of the habit of orderly, deliberate administration of justice, of the attitude of recognizing the possibility that upon investigation one may be willing to confess that one has no case and glad to be out of the controversy, if you can make these things common in society, bring them to those people who start wars and fight them, you will have done a great deal more. It is not principally the old men that make useless wars. It is the young men who make possible and respond to the appeal to feeling and to the spirit of resentment or of devotion. It is not the rich men, but the poor men, who fight wars. If you can give the latter a greater share in government, have government start from them, make them conscious of responsibility, that will help. Governor Hughes proposes direct nominations to replace the form of democracy with the substance. That will be another thing in this direction, making people think upon public affairs as a part of their general habit of life. When the community, in its aggregate or mob psychology, can be made to pause and to think, then, and not until then, will it be possible for the advocates of peace, in that moment when law stops and war begins, to check the hot blood of passion before it becomes, like Niagara, uncontrollable. [Applause.]

MR. LEROY PARKER, of Buffalo.—It seems to me that too much stress has been laid on the question as to whether the waging of a just war is to be an excuse for wars generally. Now, taking the illustrations just given by our distinguished Secretary, of occasions when he would fight if fight he ever did, when he found some poor, down-trodden, oppressed woman about to be assaulted by ruffians, and when his chivalric instincts would be aroused in her defence,—taking that as an illustration, what could be more parallel to that than the condition of that poor, down-trodden island in the South Sea, borne down by the oppressions of Spain to such a degree that our great Christian President McKinley said the conditions had become so intolerable that, if Spain did not right them, the United States would, and, as Spain did not do it, the United States did. That was the justification, I believe, for the Spanish War. Now, if we will teach our children, have our teachers teach them, if President Rhees will teach his collegiate students, and have it go out throughout the whole educational realm in this country, that no war is to be waged except when it becomes impossible to obtain right or justice in any other way than by violence, then I think we will have inculcated in the minds of the people, of the youth of the country, the true idea which underlies this whole question of war. I say that a war, waged for any other purpose than the righting of an outrageous wrong, for the righting of a wrong which can in no other way be righted than by violence, should be avoided. It was said, at a time when we were struggling with the question of resuming specie payments, that the way to resume was to resume. It strikes me that the way to do away with wars is to highly resolve on the part of the nations that they will agree to arbitrate every difference that may arise among them, and that under no circumstances will they resort to force except in those cases, which fortunately will always be isolated and infrequent, in which no other remedy will suffice. If, in going from here to-night, through some lonely part of the city, perhaps, I am set upon by a ruffian, there is nothing for me to do except to repel that attack with force. Under such circumstances I may do such a thing in a Christian spirit, nobly, truly, honestly, faithfully; but beyond that, where there can be such a thing as a resort to a tribunal for the settlement of differences such as exist among nations,—to go beyond that is going too far. And, where that opportunity is open, I say it is the duty, it is the solemn obligation, of every nation to accept it, as it is the solemn obligation of every individual man to do the same. The days when every insult must be resented by force have passed. The duel no longer prevails as the general occupation of the men of this and other countries. The duel is tabooed, and yet the time was when the man who would not take up an insult that was thrown at his feet was called a coward. Therefore, he did not dare do otherwise than resent an offence with a blow, or by calling out his adversary upon the field to shoot him down if he could. That is just the position that the nations are placed in to-day. They are sensitive as to their honor, and the effort that is being made is to produce among them a condition of mind which will lead them to lay aside that false sentiment of honor,—I call it false because I believe it to be false,—

and leave every matter of difference which may arise among them to the arbitrament of just men, of those judges which may easily be selected from the nations of the world.

Just one word on that very point in respect to what Dr. Russell said, and the impossibility perhaps of obtaining proper arbitrament. In the selection of judges what more notable example has ever been given of the efficiency of arbitration and of the independence of the arbitrators than was furnished in the Alaska boundary convention, when Lord Alverstone (I think it was), the English commissioner, decided with this country in favor of the American contention, and gave his judgment, his voice, and his verdict against his own country and in favor of the United States? We know that he was greeted with a vast deal of adverse criticism because he had not stood up for Old England, but what he did was to stand up for what he believed the right principle, and he elevated by that act of his the principle of arbitration and arbitral tribunals into a position higher than was ever thought of before as possible. Now I do not agree with Dr. Russell that there will be any difficulty in the selection of proper and competent judges and impartial judges, whether you take them from Greece, England, or the United States, large countries or small countries, representing large interests or small interests. I believe that honor would impel those men to deal justly with the questions that come before them, just as our judges on the bench to-day deal with the questions which are presented to them, without fear or favor, uninfluenced by passion, uninfluenced by anything but their own strict sense of right. And we will yet reach that point, which I do believe is not far distant, when the questions which are up among nations shall be submitted to tribunals as they have been repeatedly, and when we shall see the judges on that august bench dealing with these questions just as the justices of our Supreme Court of the United States deal with the great questions which arise between one State and another of our own Union. The time is not far distant. Mrs. Andrews has told us how much has been done already: you, Mr. Chairman, have told us what you will do, Dr. Rhees has told us what can be done to influence the minds of young men in college circles; and, as I say, I believe the time is coming, and coming rapidly, when we shall see these tribunals so firmly established as the sole and only resort of nations for the settlement of their differences that war will be a memory of the past. [Applause.]

MR. EMERSON (the Chairman).—We might stay here all night, and we would never agree, if we debated all that length of time, whether the Spanish War was justifiable or not. President McKinley, whom Mr. Parker has alluded to, was undoubtedly opposed to that war, and was finally hurried by what he supposed was the wish of the people into advising a declaration of war. I remember being in the House of Representatives just at the critical time, and heard the leading representative from Texas, now senator, make a fiery speech in which he denounced the administration, said that Spain had insulted the dignity of the United States government and the President hadn't sand enough to resent it. That evening I went to a theatre in Washington, and a girl sang, amidst great applause,

the most tremendous I ever heard, a song every stanza of which ended up with the refrain, "We wish McKinley would show a little spunk." It was that sort of thing that carried the President off his feet. Whether he showed resolution enough or whether he did not is a mere matter of opinion that it is of no use to discuss.

I want to thank everybody for coming here to-night. I think we had a good meeting, and I will now let you wend your way toward home. To-morrow morning we are going to have the greatest meeting of all. I hope all the representatives of the school-teaching force will be here and bring some others.

[Saturday Morning, September 14, 1907.]

DR. ISAAC FRANKLIN RUSSELL called the final session of the convention to order at 10.15 o'clock, and after the discharge of a few items of business introduced Mr. Clarence F. Carroll, Superintendent of Schools of Rochester, to read a paper on "Education for Peace in its Ethical Relations."

Mr. Carroll then read his paper.

4. EDUCATION FOR PEACE IN ITS ETHICAL RELATIONS.

BY CLARENCE F. CARROLL, SUPERINTENDENT OF SCHOOLS OF ROCHESTER.

In the past some of the highest ideals of the race have been associated with war. War was divinely ordered and divinely approved. A nation's history involves an account of its military campaigns, and conquest is often regarded as a nation's chief glory.

The hero has generally been a man of blood, a slayer of men. The ancient conqueror, the armed knight, the guerilla, the Indian chief, and the plain soldier have shared the system of wholesale slaughter. The man who hesitates to enter this conflict of arms may be regarded as a coward or traitor, and the soldier as the savior of his country.

In war and in peace we admire the qualities that characterize the soldier,—fearlessness, endurance, sacrifice. To the present day these qualities have generally been supposed to be most conspicuous in times of war, and our education still emphasizes the martial spirit.

Yet, if it is true that war has been supposed to be the only road to glory, it is also true that man has always had intuitions that lead to peace. In war we anticipate peace and long for war to cease, and even the savage solemnly buries the hatchet and smokes the pipe of peace. The prophets and poets of the bloodiest nation of antiquity predicted that swords should be turned into ploughshares and spears into pruning-hooks. Peace is thought of as the millennium. All these sentiments were once only voices, yet they were persistent, ever strengthening, confidently believed to be in the end all prevailing.

This elementary, powerful faith received a new impetus in the life and utterances of Christ. The beatitudes and the spirit of service proclaimed at the Christian era have at last begun to influence the councils of men and of nations. Statesmen and soldiers have openly expressed their hatred

of war. The duelist has become a criminal, the bully an offence, and the horrors of war are not described in public. The stories of Hector and Achilles are read as fairy tales for children.

We tire of Alexander, Charlemagne, and Napoleon, and put in their places the conquests of peace represented by Alfred, Peter the Great, Livingstone, Gordon, and Lincoln.

If we examine the silent working of these moral forces more closely, we find that brute force and the survival of the fittest belong to Nature's plan for the lower orders of the universe. But there can be no ethical element, no moral gain, where these prevail. Man at his worst surpasses the brute in his own domain. Primarily, man displays every brute instinct. Even the sweet child of one or two years is self-centred and dominated by selfish impulses that may make of him a fiend unless they are restrained. But this same child has a marvellous capacity for attaining the intelligence and social inheritance of the race. He is imitative, sympathetic, and soon co-operative. And so, as the savage state and primitive man, as the clan and the feud, are left far behind, every child is, in a sense, born to these higher things. That is, the earlier stages of the moral development of the race are practically eliminated from our experience.

The above statement of the social and imitative in man implies the ethical. "Mine and thine" are the code of the new man, the new religion, the new citizenship, the new education. Sympathy, the foundation of the new commandment, carries with it truth and justice. The ethical implies that we submit all our acts to the test of higher standards. Thought, purpose, deed, nay, the conventions and formalities of life, are rigidly judged and determined by this unwritten code. Thus as individuals, and gradually as nations, we rise to the right, to the ideal, and finally to the divine.

How more definitely shall we define education for peace? Clearly, we must study the lives of the great advocates of peace,—Washington, Lincoln, and McKinley. We must be somewhat familiar with the words and acts of these and many other men living, and with the words that speak peace found in Holy Writ and classic authors. We should follow the present mighty world movement inaugurated by the governments

of the great nations, represented by some of the ablest men living. All this with the distinct aims of the peace advocates is a vital part of present history and literature, and should become a part of common knowledge. This primer of peace literature should be mastered and imparted by editor, parent, preacher, and teacher.

But I have tried to suggest that we have at hand a far greater task to perform, a far more engaging service to render. Maxims and formal knowledge are not sufficient. They are only the outward signs of the movement, vague to children and to the multitude. I have referred to the sources of the peace movement, the material out of which character and morals and conditions of peace are formed. If instincts toward peace are fundamental and general, and if these are ever in conflict with lower inclinations, then the ethical dominates only as a result of training. If this is true, our chief business is with familiar situations. We must develop the ethical, the peace quality of humanity, out of daily experience. These common experiences we call the arts of peace. They are the dearest things in life, and well deserve the new emphasis that is being given to them. They are always the real foundation of every social advance. They are the real peace movement.

This broader education for peace begins in the great kingdom of childhood. The greatest educators of modern times have explored this newly discovered kingdom. Rousseau, Pestalozzi, Froebel, Spencer, and the educational leaders of the present hour have endeared themselves to mankind by their zeal in child study. Practically, every university, great and small, has a growing department of elementary education.

Three lines of investigation are most prominent in pedagogical courses. And, first, as a result, children are, as never before, allowed the free use of the five senses. Children study and rejoice in nature and all the works of God. Suddenly the world is full of children's literature, of pictures and picture books, and men and women live with and are companions of their children. They journey together to the mountains and to the sea, and across the ocean.

Another phase of this new movement is seen in the recreations of life. All the world seems to be a vast playground.

Sports, local, national, and international, are the order of the day. We play golf and tennis, lacrosse and cricket, we crowd every gymnasium, and we go by thousands to see the sports of youth and children. Park Boards and Boards of Education are expected to equip our cities with playgrounds for every child, rich and poor, and to gather all the children from lanes and alleys, from their strife and degradation, and to provide supervised sports, that will contribute to health, character, and citizenship.

Not the least important and far-reaching, industrial training has become a factor in peace education. Children are again taught to use their hands, to do, to share the industries of civilization. Engineering colleges make it possible for a highly educated young man to enter the competition of the industrial world, and in every reputable school system every child from the kindergarten acquires considerable skill of hand and enlarges his intellectual and practical resources by systematic manual training.

We should miss the point of my argument if we fail to emphasize the reflex effect of this activity upon the movers and the community at large. Good men and women give freely of their money and time to organize institutes, gymnasiums, settlements, and playgrounds. Scores of associations exist in every large city for the sole purpose of social betterment. Churches forget their old creeds and meet as a moral and religious association, to discuss chiefly playgrounds and manual training as spiritual weapons in redeeming the community and converting the heathen.

Every effective local and national movement for moral reform quickly spreads, and the world becomes a unit along these familiar lines of reform. Thus, as communities, we are zealous and busy with these fascinating lines of moral reform, and we must possess the spirit of peace and good will as a necessary condition, as a prerequisite and accompaniment of these community forces.

I have attempted to show that our instincts tend to produce conditions favorable to unity of human action, that the social element is usually a part or a phase of the ethical. And if there has been tension and strife in human institutions, if the home, the church, and the school have been characterized

by friction and severity of discipline, these repulsive features have been modified, and reasonable freedom and co-operation have been largely substituted for offensive authority. These three institutions are more in accord than heretofore. The public school, at its best, is true to the highest aims of the race. It is capable of assisting materially in transforming ignorant aliens into an improved quality of citizens. Without claiming too much, it is true that the schools are crucibles surpassing the dreams of the alchemist, and education is rapidly becoming an applied science.

In particular, all these nurseries of modern citizenship help to produce interests, initiative, freedom, and the best form of co-operative effort. Such a spirit eliminates strife and gives a basis for lasting peace. If I have not shown that this spirit dominates the world, it is still true that graft, greed, intemperance, and vice are anachronisms. If the grip of these monster sins is still strong, yet the sentiment of the best men has advanced to higher ideals, and the public brands as infamous every newly exposed crime against society. These instances are survivals, and not in harmony with the convictions of the community. These evils cost more than armaments. They cause a greater moral ruin than all the wars men wage, and real peace cannot exist until they, too, are subdued. Peace on earth and good will cannot yet prevail, for as enemies all these are relentless, they admit of no armistice. If wars of conquest have lasted a hundred years, war against some of these has been waged for thousands of years.

Let us not be misunderstood. The expense, the suffering, the malice of war, cannot be overstated, but the destroyer of peace does not confine his havoc to the battlefield.

Finally, while nations must act in concert and law-makers must punish offenders, all good men must do their good work in educating sentiment and training to right action. Education for peace, then, implies two forces, one working from above, and the other from below, and these are really different parts of the same organism.

It is a familiar psychological maxim that we create interests in a child's life, that we may eliminate lower forms of impulse. The new vigor of this service in the interest of the individual acts in precisely this manner. The best men and

women in every community have at least some small share in this new spiritual education. The city government which represents the community must perforce create a park board and supply funds for playgrounds, vacation schools, kindergartens, evening schools, manual training, and physical culture. A vast army of men and women trained to the hour are in charge of these interests, and Church and State dignify and support the great moral crusade.

While thus co-operating in promoting human welfare, attempting to reach and bless every human being, we shrink instinctively from the horrors of war. In the unselfish effort to save and bless every living soul about us, we can never willingly strike down any human being.

The ethics of this new peace movement are written across the door of every home, church, school-house, and mission in the land, sounds forth clearly in the Farewell Address of our first President, is taken up in the demand for a fair deal, and rings out in the confident appeal to the consciences of the common people. We may confidently trust that these instincts of peace will prevail, and that these great ideals will not lack exponents and advocates.

GENERAL DISCUSSION.

DR. ISAAC FRANKLIN RUSSELL (the Chairman).—I am sure from your generous applause that you will all agree with me that we have listened to a very delightful and instructive paper by Mr. Carroll, who holds the responsible post of superintendent of public schools in our neighboring city of Rochester. We of the American Association of Social Science stand on a plane of the broadest catholicity. We believe in the commonwealth of intellect. But you will allow me to say, because we are within the range of this broad catholicity, that, as a Puritan and a son of Plymouth Rock, I am very glad that our friend gave such a strong religious cast to his remarks, and invoked the high authority of the Nazarene, whose noblest title was "Prince of Peace" and whose noblest doctrine was non-resistance, to the support of the truth that we have been preaching here for several days. He who was by his own confession king of the Jews paid tribute to Cæsar; and when in the moment of his passion his enemies came out against him with swords and staves, though he saw twelve legions of angels with flaming swords ready to aid him and strike down his persecutors, he rendered himself obedient unto death, and said, "Put up the sword within its sheath: Whosoever taketh the sword shall

perish by the sword." And, when just one sword was drawn on his behalf at midnight, he reached out in mercy toward the victim who had suffered the loss of his right ear, and said, "Suffer ye thus far," and touched his ear and healed him. So we have the splendid influence of our modern faith and the example of our Master in the interest of universal peace.

I was impressed by what our friend said of Rochester and what I have seen in the press of Buffalo regarding the attitude of the public school authorities toward this peace movement and teaching children something else than the struggle of war and the strenuous life, teaching them the charms of human fellowship and the joy of comradeship and giving attention to the prime necessity, the physical needs of man. There, too, it seems to me, the influence of the Master and the authority of the Master are also in point. Instead of preaching to tired and hungry people at dinner time, he bade them sit down, and he distributed loaves and fishes for four thousand and again for five thousand. When a man needed food, he didn't give him a stone. I have found myself, in looking around and observing the methods of street preachers and others, that the good things of the gospel come along the line of soap, soup, and salvation [laughter], cleanliness, something to eat, and then the full spiritual heritage of man. In New York we appreciate this. One of the latest innovations there is the erection of bath-tubs in school-houses in which the parents of the school children can take a bath. This of course is pretty hard discipline [laughter]: it seems a recurrence to despotism. We are pioneers in New York. I think we are in all things. Such cities as Rochester and Buffalo follow us. [Laughter.] Speaking of New York, we have made most generous contributions, running into millions, of the tax-payers' money, in the interest of outdoor playgrounds and recreation centres. I think myself that this is distinctly in the interest of peace. We must work to inspire in the young the sentiment that we are the most peaceable people in the world and that we are the ones to get the glory for abolishing war among men; and we of the American Social Science Association welcome to the ranks this innumerable host of noble men and women who are teaching the children of our public schools throughout the length and breadth of this land. [Applause.]

The chairman then introduced, as the next speaker, Mr. J. N. Larned, of Orchard Park, N.Y., whose name, he explained, had been inadvertently, though appropriately, spelled "Learned" on the printed programme.

Mr. Larned then read his paper.

5. THE PEACE-TEACHING OF HISTORY.

BY J. N. LARNED, BUFFALO.

The staple of history has always been War. Exhibiting the most forceful as well as the most brutal activity of man, it has shaped most of the primary conditions of life for all communities of the human race. In some way it has determined the destinies of most nations from beginning to end. If its fires are not burning, its swords not dripping, its victims not dying, on the stage of any performance of the moment, they are always in the scenic background, never to be shifted out of sight or out of mind.

Personally, in all ages, men have given themselves sacrificially to war more devotedly than to anything else. Collectively, in their tribes and in their corporate states, nations, and empires, they have given to nothing else such assiduous thought and care. For nothing else have they striven so untiringly to perfect themselves. To no other art have they ever applied so much of their minds and their means. To no other purpose have the resources of their knowledge been so strained, from the first rudiments of primitive invention down to the latest attainments of the science of the present hour. Their armies, their fleets, their weapons, their military systems, whether barbaric or feudal or modern, have always exemplified the highest constructive and organizing attainments of the latest day.

War, then, represents the most continuous, the most universal, the most impassioned and energetic of the collective undertakings and activities of mankind throughout the long past. It has exercised them in intellect and feeling, trained the natural forces in them, worked upon their ambitions, moulded national character among them, far more than any other. Of all subjects in history, therefore, it calls for the gravest treatment, and, as a rule, it is not so treated. It supplies to history, as a mere tale of the adventures of man in the world, the more enlivening elements of the story, the more

dramatic situations, the more fascinating actors; but as having a distinct and immense importance in itself, apart from its incidents and apart from the personalities concerned in it,—as being a tremendously dominating influence in history, to be investigated and profoundly considered as such,—how often is that brought to our consciousness by anything we find in an historical work?

The writers and teachers of history lead us into every other special field of human action and make us attentive to the particularities of its importance, to the influences that have worked in it for and against the welfare and advancement of mankind, to the causes and consequences that are traceable into it and from it through wide surroundings of social condition and event. We are stopped thus everywhere in the presentations of history to contemplate governments, religions, movements of trade, industry, invention, growths of literature and art. But it is not often that we are brought to the same consideration of what, in their nature and their importance, the influences and the consequences of war have been.

Yet all other influences and consequences have been secondary and subordinate to those of war. When we examine the constitutions and institutions of national government, we find more of their provisions and adjustments directed to anticipated contingencies of war than to any other object for which nations organize their rule. Four of the 7 articles of our Federal Constitution as framed originally, and 8 of the 23 sections into which they are divided, have something of reference to that contingency. Eleven of the 32 clauses which define the legislative and executive powers of the general government and the powers withheld from the States are concerned with the same. Elsewhere in the world the organization and preparation of nations for armed conflicts with one another enter into the constructing of their governments in a measure far greater than this.

When we look at religions in their historical exhibition, we find them moving the greatest masses of men to the greatest animation when their differences have furnished pretexts for war; and we might be taught that very much of what goes into history under the name and show of religion is only the war-passion disguised. But how often are we led to see it so?

When we turn to the scrutiny of commerce as an active agent in the making of history, we see a different but even larger intermixture of its incentives and workings with those of war. The two coarse passions, the combative and the acquisitive, which can be the most powerful in human nature if not mastered by moral and intellectual strains, have been in alliance here from the beginnings of the social state, each using the other for the satisfactions it has craved. The warriors have always been eager and busy in the service of the traders, to break openings for their reaping in wider fields, and the traders have always been ready to give them that employ.

When we study the sciences and the industrial arts in their relation to the historical activities of mankind, they amaze us and grieve us by the alacrity of their devotion to the purposes of battle. It may be that as much knowledge and invention has gone, first and last, to the easing and bettering of the conditions of life in the world as has gone to the production of guns, projectiles, explosives, mines, torpedoes, fortifications, battleships, armies; but that is far from sure.

As for literature, if we should separate all that it has drawn from war, of incident, inspiration, motive, color, excited imagination and emotion, would there be a remaining half of equal spirit and power? I fear not.

It is, then, the hideous fact of the recorded past of mankind that its exhibit of men in battle, or planning and preparing themselves for battle, or glorying in memories of battle, is the most persistent and conspicuous exhibition that it has to make. It is the most hideous of historical facts, but its hideousness is not made impressive to us in history, as history is too commonly written and taught. It ought to fill us so with horror and pain that the shows and trumpetings, the heroic and tragic romance which garnish it and disguise the underlying savagery of it, could never divert our thought from its meaning of shame to the human race; but it does not.

I think the main cause of this is not far to seek. Each generation of the past, in leaving its records to posterity, has left them permeated with its own feelings and judgments, its own estimates and valuing of men and things, its own admirations, its own ideals. These carry an influence which

has stayed more or less through all the centuries, in the impression which historical reading and study have made upon successive generations of mankind. To this day it is hard for us to think of what was done in ancient Judæa or Greece or Rome with feelings that are really fit and natural to the moral and rational state of the modern mind. Our ethical and logical standards, as we hold them abstractly at least, differ widely from those of the pre-Christian ages; but how easily we can read the Hebrew chronicles and the Greek and Roman histories with no more than half-consciousness of the difference, and with less than half-consciousness of the moral infidelity which this involves!

It is only by a determined effort that we can realize how much of a coloring from primitive ideals of excellence and primitive conceptions of right has been carried down the current of written history, and how much of modern feeling takes a tone from it that is untrue to modern knowledge and belief. Its most mischievous perversion is in the admirations it keeps alive for actors in history who were naturally admirable to their own times, but who cannot with reason be admirable to us. The heroes of an age and a people who imagined for divinity itself nothing loftier than the attributes of the gods of Olympus ought not to be the heroes of a generation and a race which look to Jesus of Nazareth as the perfected man; but what homage we pay even yet to the memory of men in Greek and Roman story who fought with surpassing valor and strength, and looked heroic, therefore, to their contemporaries, whatever the object, whatever the motive, whatever the consequences of their fighting might be!

In the early stages of civilization, when social order is but beginning to take form, strife is a normal exercise of body, will, intellect, and energy in men; and it is natural that they should look to it for the high tests of human superiority. To society in that state, war could not seem otherwise than glorious, because it afforded those glorifying tests; and poetry was born then in passionate song-bursts of admiration for the invincible warriors of the tribe. Those birth-songs of poetry, which glorified war and the heroes of war in Homeric Greece, in the Rome of the kings and the early republic, in the younger ages of all peoples who have sung

any songs of any praise, seem to have been powerfully the carriers of that glorification out of times and conditions in which they expressed a natural feeling into conditions and times in which the feeling was wholly natural no longer. From generation to generation poetry has inspired poetry, arousing the emotion that demands it for utterance, and each has sent forward its motives and its themes. In that way the primitive hero-motive of the poets went into history, and has been projected through it, from first to last, with an influence much greater than we comprehend.

Of course, that influence has always found lingering barbarisms of temper in large parts of all society to nourish it well; but *it* has nourished *them* even more, and I am sure that they would not otherwise have kept the mischievous vitality they have to this day.

On the rational side of their nature, men have always, in the process of civilization, been taking slowly into their understanding and belief a code of morality that would question every war, to find whether or no it could show on either side a necessity of defence that gave righteousness to that side, and that would put every hero of battle on trial to learn what it was that he fought for and with what warrant he slew his fellow-men. Civilization could not be a process of rational evolution if it did not work toward moral enlightenments like that. And it has. But feeling is stronger than reason in the generality of mankind, and antiquity, even primitive antiquity, has been able to transmit to us a thousand times more of its feelings than of its beliefs.

If history, in its large sense, embracing the whole literature of the past, serves as the vehicle of that transmission, the fault is our own; for it does not proffer to us from its cargoes what we are choosing to take. In all its showing of the conflicts of nations, races, parties, religions, its appeal to us intellectually is for abhorrence of one side or both sides of every war that ever was fought. It never justifies forgetfulness of the awful crime that is somewhere in every war, or indifference to the placing of the crime, or admiration for any performance of ability or bravery in the committing of the crime. If we permit ourselves to feel that indifference of admiration for deeds which morally indifferent generations in the past

have called heroic, we are simply servile to traditional habits of feeling, and do a wicked violence to our better knowledge of right.

And this tends to deprave the moral judgment we exercise on kindred deeds of our own time. If the blood-drenched figure of Napoleon shines heroical and glorious in the eyes of more than half of the people of the Christian world to-day, it is mainly because they see only his likeness in kind to Alexander of Macedon, to Julius Cæsar, to Charlemagne, and feel impelled by what we may call the habit of the ages to make their estimate of him correspond with the Greek, the Roman, and the mediæval estimate of them. Let us not blame history for bringing thus the barbaric standards of twenty centuries ago to the weighing and measuring of this modern prodigy of atavized barbarism. As much as we allow it to do so, history will keep to each age its own gauges of human quality, its own rules of conduct, its own heroes. When they are shifted out of place and bring confusions, perversions, distortions of moral sense into our view of events and of men in our own day, we do it ourselves; and, in doing it, we are false to the study and teaching of historical truth.

Not many of us go far enough in the following of Christ to feel that no wrong and no blow should be resisted, and that there can be no righteousness in war. But we cannot read history with just attention to motives in it and be doubtful of the wicked criminality of all wars on one or the other side, and of most wars on both sides. In many conflicts each party has persuaded itself that a righteous necessity compelled it to take arms; but the righteous necessity was never imperative to both, and the strict showing of history will concede it very seldom to either. Almost always, on the defensive as well as on the aggressive side of a war, there has been enough of wrongful temper, of needless provocation, of inward willingness for the sword, to burden it with a serious share of guilt.

We tried long to hold the fathers of this republic wholly blameless for the war in which they won its independence; but, the farther we have been moved out of the atmosphere of their time, the more impossible it has become for us not to see that some considerable excuses, at least, were given to the British government for the angry unwisdom of its measures, and that

all the belligerent temper which exploded in a revolutionary war was not engendered in the cabinet and court of King George.

In like manner the clarifying, cooling influence of time is working among us, in the North and in the South, a modification of our views of the sectional temper that was heated on each side to its conflagration in our terrible Civil War. Reason and just feeling compel us, in both sections, to see a large action of motives and excitements and instigations on both sides of the whole issue concerning slavery that were not purely patriotic, nor purely moral, nor purely from any unselfish conviction of right. I think there was never more of sincerity and pure motive in any war than in that; but it is clear to me that even that was an unnecessary war, because the best mind and the best feeling of the people never had control, on either side, of the discussion of the questions that led them into it. Influences more partisan than patriotic and more of passion than of principle were working for years to push the sections into conflict, and they did not work on one side alone.

We often say of the Civil War that it was inevitable, and that is true if we mean what Christ meant when he said, "It must needs be that offences come." In his thought he reckoned the inevitableness of wrong-doing among men, and was pointing to no necessity which they do not themselves create; for he added, "But woe to that man by whom the offence cometh!" Of all offences to God and man, that of war is assuredly the blackest we know or can conceive; and, if ever we find reason to say of any war that "it must needs be," let us take care to remember that men have made the need, that the woe and the crime of it are on their heads, and that we must not look for the whole guilt on one side.

History, written with truth and read with candor, carries this teaching always; and my plea is for graver attention to it than our tradition-colored habits of mind incline us to give. Especially in the introduction of the young to historical reading, it seems to me of great importance that we train them to a justly abhorrent attitude of mind toward war; to such an attitude of thought and feeling as will check the easy excitement of interest in armies and commanders and incidents of

battle, awakening a moral and rational interest instead. If they read a story of war with the feeling that it is the story of somebody's or some nation's crime, they are sure to be moved to a judicial action of mind, and find their liveliest interest in searching out and apportioning the guilt. By this leading they can be carried into more or less critical studies of the moral, the political, and the economic antecedents of a war, scrutinizing the right and the wrong, the practical wisdom or the unwisdom, the true or the false reasoning, in public policy, in popular feeling, in the aims and measures of statesmen, that are discoverable to them in the doings and disputes that brought it about.

For example, in our own history, if young students of it, when they approach the occurrence of the war with Mexico in 1846-47, are led to a serious examination of the circumstances which preceded it, not casually, as though they were only pursuing a common routine in the learning of facts, but with the especial attentiveness of a feeling that the conduct of their country is to be judged, as to its consistency with principles of right and plain rules of honor, the investigation cannot fail to interest them, generally, more than the mere story of the battles of the war. And it will give them new moral convictions and a new conception of patriotism; for they will begin to see that a true lover of his country must care more for keeping uprightness and honor in the conduct of its government than for having victories in battle with other peoples to boast of, or for having conquered populations to rule, and conquered lands to cultivate, and conquered ports for extended commerce, and augmented wealth in conquered mines.

And when such young students discover, as they will, that the taint of dishonor, of false pretence, of iniquitous motive, is in all the procedure by which our government forced Mexico to engage in war with us; when they read the words of Benton and of other honorable leaders in its own political party, who proclaimed and denounced the flagrant wickedness of its course; and when they note the emphasis of the vote in the next elections by which a majority of the people condemned it,—then, if they are reminded of the value to us of California, New Mexico, Nevada, Utah, and large parts

of Colorado, Wyoming, and Arizona, with Texas stretched to the Rio Grande, which were our conquests in the war, and are asked, "How could we afford to do without them to-day?"—then, I say, they will be brought face to face with such a question as will test their moral nature and probe their moral sense to its depths, and have, on the moral side of their education, a tremendous effect.

Can anything that a nation gains by a wantonly wicked, aggressive war be thought of by honest citizens as the justification of its war? Can a nation win covetable territory by means that would be criminal and shameful to an individual if he used them for winning his neighbor's lands, and yet not be criminal or disgraced, or merit less from its citizens of their fealty and love? Can a man uphold his country in an aggressive war with less wrong-doing than if the aggression was his own? If such questions could be threshed out with earnest thoroughness in our schools, again and again, as they rise naturally in historical study and in their bearing upon the facts of particular wars, I am sure that a new aspect would be given in another generation to the whole subject of war and a new attitude upon it to the public mind.

Now that the nations of the world are instituting a great, august tribunal for hearing and adjudicating disputes among them that threaten war, we may hope that it will become a prevailing natural habit, in the reading and study of history, to imagine a summoning of the authors of past wars to submit the grounds of their contentions to such a court. Apply that imagination, for example, to the abominable wars of the eighteenth century, in which half the world was desolated and tormented by thieves' quarrels among the monarchs and ministers of Europe in the evil time of their unchecked power! Apply it to the War of the Spanish Succession, or to the War of the Austrian Succession, or to the Seven Years' War! Imagine a bench of disinterested and honorable jurists attempting to give serious hearings and decisions as to whether Louis XIV. may repudiate the solemn engagements that he entered into when he married the Infanta of Spain and joined her in renouncing all contingent claims to the Spanish crown: or whether Frederick the Great and his confederate highway-men may attack and despoil Maria Theresa, whose inheritance

of the Austrian dominions of her father they had pledged themselves to uphold; or whether Maria Theresa and Catherine of Russia may revenge themselves on the same Frederick by organizing a formidable combination for the carving and dividing of his kingdom!

There is not the slightest open question between right and wrong to be found in the origin of one of these wars. There is nothing to debate upon, nothing to reason about, in the grounds upon which they were fought. They offered, therefore, no case that could come before an international court like that of The Hague. And, what is more to be considered, no tribunal of that character could exist under the conditions which produced such wars. From which it follows that the conditions producing a Hague Tribunal are conditions that may fairly be expected to extinguish the possibility of wars as openly wicked as those into which Europe and colonial America were dragged by Louis XIV. and XV. of France and Frederick of Prussia, called the Great. A generation that is able to contemplate the submission of its national disputes to a rational adjudication cannot easily be tolerant of a war that has no rationally debatable cause. We have gone far in the way of civilization within the past century and a half, if we have come to this; and in realizing the advance we are realizing how much of the actuality of civilization lies in the movement toward suppression of war.

Yet war has not only its tolerant apologists, as a necessary evil, but its admiring upholders, who commend it as an exercise of energies and virtues in man which his best development requires. In their view he could not be manly if he did not sometimes fight his fellow-men like a beast. Courage, resolution, independence, love of liberty, would suffer decay. Rights no longer to be contended for and defended would be valued no more. Peace, in a word, would emasculate the human race. Does history bear out such a view? Not at all. The peoples which have exercised their self-asserting energies most in war are the peoples in whom those energies went soonest and most surely to decay.

Among the strong nations of the ancient East the Assyrian pursued the busiest, most constant career of war; and its end was the most absolute extinction, leaving the least mark of

itself behind. What has value in the ruins of its buried cities is what it took from the more ancient Babylonia. Among the Greeks it was the Spartans who exemplify the fruits of the culture of war; and how much of Greek influence in history came from them? The Romans were a great people, doing a great work in the world—for how long? Till they had exhausted the forces of genius and character that were native in them by persisting war; and that exhaustion was begun before the Republic went down and the Empire took its place. The Romans had then organized and given their name to a great incorporation of the energies of many other peoples, Latin, Greek, Gallic, Germanic; but the freshening absorption only retarded, but could not arrest the decay. If war could ever invigorate and better a people, we should surely have seen that effect in the history of Rome; and, surely, we do not.

Among modern peoples the French have had most of whatever culture war can give; and the French have a less hopeful future than any other people of importance in Europe to-day. On the other hand, the English have been and are, beyond question, the people of highest achievement in the modern world,—the people who have done most for the liberation and general uplift of mankind; and, of all who inhabit Europe, the English have had the least of whatever culture war and battle can give. If this seems to be a misstatement, bear in mind that the many wars of England have been naval more than military, involving relatively few men in actual fight; that she has used soldiers who were not of English blood, from subject races or subsidized allies, to a great extent in her wars; that a large British army, on the scale of the armies of Germany and France, has rarely been seen on any battlefield; and that Englishmen had never had, since Cromwell's day, at least, so extensive and so serious a personal experience of war as that which they went through in their late conflict with the Boers. It is no exaggeration, then, to say that the qualities exhibited by the people of English blood have been developed less by the culture of battle than those of any other living race, and that the barbaric doctrine which commends war as being necessary to the moral training of mankind is refuted sufficiently by that single fact.

It is far from my thought to question the moral nobility

of the spirit which accepts battle as a stern, imperious, terrible duty of defence, when home and country or sacred institutions and rights are wickedly assailed. Then it is self-sacrifice, the very sublimation of the human soul. Then it is truly and purely heroic, and uplifts humanity by its inspiring example. But the kind of courage and the kind of fierce energy of spirit to which battle is attractive,—what good to the world can come from the cultivation of those? They are forces, to be sure, that have usefulness in other exercises than that of war. They are part of the propulsive power in that subjugation of Nature by Man which we call the material progress of the world; but are they not the part of that power which is ruthless, oppressive, dangerous to society, by the hard and aggressive selfishness with which it works against the common good?

But leaving that question aside, and assuming that the coarsely militant courage and militant energy, as well as the courage and the energy that are militant only when duty makes them so, are good qualities in men, and to be cultivated for the improvement of the race, we are confronted by the singular fact that the very process of their cultivation is destructive of the good effect we seek. We exercise the fighting temper in men by war, and the exercise kills them in the prime of their lives or keeps them from marriage, and in one or the other way lessens the breeding of the quality of man that we are supposed to be endeavoring to increase. Every great war is a dangerous drain upon the stock of valor and fortitude in the spirit of the peoples engaged; and the drain runs near to the dregs when war succeeds war, as it does and will if war is believed in as a national good. There has been no lack of assiduity in the cultivation of humanity by war. What has the product been? Look over the training grounds of Europe, where the schooling has been busiest and longest, and see!

History, not well studied, but written or read lightly, for its incidental romance, can make no other impressions than those I have alluded to at the beginning of my remarks. Because war puts a deluding emphasis upon its own part of the story by rubrication of the text. Because the Past has tinctured it with states of feeling and of thinking which ought

to have faded long ago, in the light of increasing knowledge and in the warmth of the increasing neighborliness of mankind, but which have stayed, and will give their color to the influence of historical reading if we take it with no proper filtration through the moral beliefs of our own day. The songs of the heroes of those ages when battle was a normal exercise of high qualities in men can still play upon our imaginative and sympathetic brains, just as the trumpets, the drums, the fifes, the banners, the plumes, the splendid pageantry of a marching army play upon our quivering nerves of bodily sense.

A poet, Richard Le Gallienne, has described the deceit of the emotion in exquisite verse:—

War
I abhor,
And yet how sweet
The sound along the marching street
Of drum and fife! And I forget
Wet eyes of widows, and forget
Broken old mothers, and the whole
Dark butchery without a soul.

The tears fill my astonished eyes,
And my full heart is like to break;
And yet 'tis all embannered lies,
A dream those little drummers make.

Art, thou hast many infamies,
But not an infamy like this.
Oh, snap the fife and still the drum,
And show the monster as she is!

DISCUSSION.

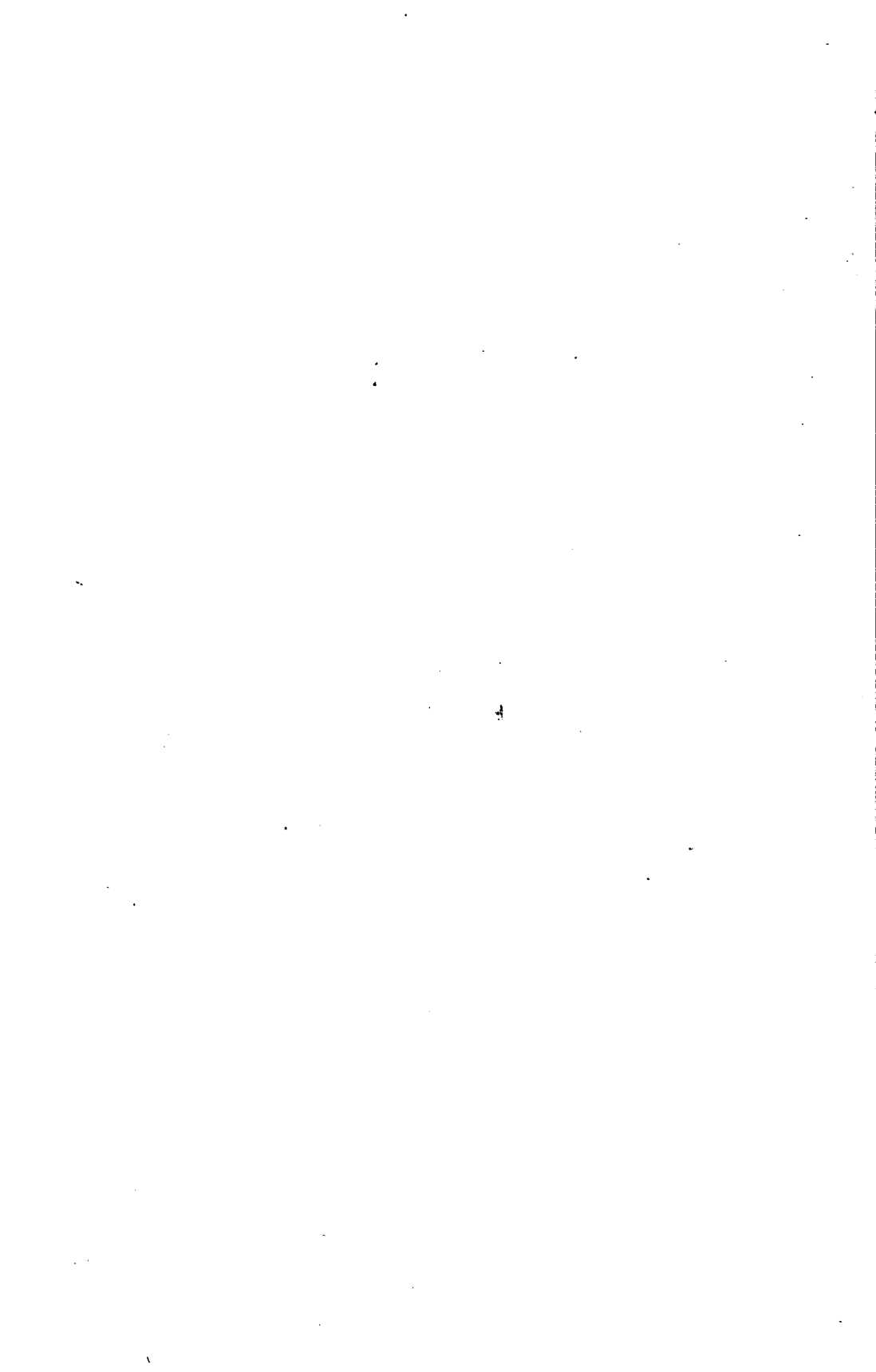
DR. ISAAC FRANKLIN RUSSELL (The Chairman).—How well I spelled his name "Learned" on the programme! I never saw the gentleman before and little know who he is; but I say boldly that he has brought us glorious truth, and in language, I think, of transcendent and supreme eloquence. I agree with him that idealization has been along the wrong line, and history, as heretofore taught, has been simply a succession of pages of the names of conquerors and feats of war, and all the great men whom we have glorified have been those who were taught to fight and kill. No one can go through Westminster Abbey, St. Paul's Cathedral, or the public squares of London, without seeing that monumental honors

have been awarded almost wholly to professional man-killers. I remember, after making a tour of Europe and winding up at Dublin, I saw a great pyramid in Phoenix Park, and said to the cabman: "Don't tell me what that is. I know what that is. It is either the Wellington monument or the Nelson monument." [Laughter.] The United States of America has elected to the Presidency a long succession of generals. We have made heroes of our man-killers. I am glad that our good friend did not tell us to change our estimate of Washington and Lincoln and McKinley, those great heroes and patriots. I may be allowed, perhaps, in these closing moments of our convention, to say that, if the American boy wants to know the story of the Mexican War, he can find it in the personal memoirs of U. S. Grant. Grant was ashamed of that war, and grieved because he was compelled to draw his sword in the interest of the expansion of the slave-cultivated area. And we ought to be ashamed of it, too, just as England is ashamed of that triumph of arms by which the opium trade was forced upon China, defenceless and beaten China. One of the loveliest American women I know gave a million dollars to the university where I am a professor to erect on a noble elevation in the metropolis a Hall of Fame. As a member of the University Senate, I have had to go over the names submitted, and help in distributing these honors in accordance with the returns sent to us by the judges,—all sorts of great and distinguished men in politics and religion and art; and I was grieved to find that the vast majority of these places in our American Valhalla were voted to soldiers and successful captains. Nothing but the iron rule by which we reserved certain obscure niches in that vast temple for the kings of mind and captains of art has saved any place at all to anybody but successful generals. I hope the time will come, in schools and in temples of peace like this where we are now assembled, when we shall see something in the way of decoration besides pictures of men with swords and epaulets, and where I will be able to read with my old eyes some motto on the wall besides that which recalls the glory of England at Trafalgar. [Applause.]

I want to thank my new friend,—I feel that I know him now, having heard this noble discourse, these glorious arguments and splendid truth,—I want to thank him for coming from so far as Orchard Park, wherever that is [laughter] to bring our deliberations here to this fitting climax.

In view of the lateness of the hour, unless some one wishes to speak, I will declare our annual convention adjourned.





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